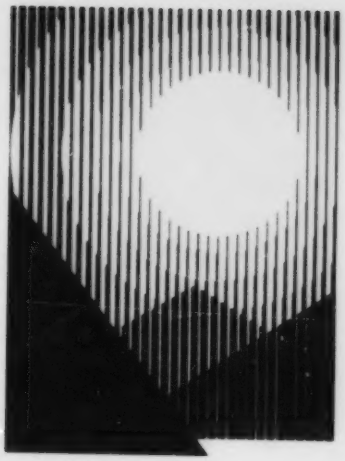

Prairie Justice Research

University of Regina

University of Regina

Aboriginal Justice Series
Report No. 3

AN ANNOTATED BIBLIOGRAPHY

OF

ABORIGINAL-CONTROLLED JUSTICE PROGRAMS IN CANADA

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PREFACE

In 1990-91 Prairie Justice Research (PJR), School of Human Justice, University of Regina, agreed, as part of the Ministry of Solicitor General's Contributions Agreement, to undertake this Annotation of Aboriginal-Controlled Justice Programs across Canada. PJR sees this report as the third and last in a Series on Aboriginal Justice. The series started with a research consultation in March 1990 on ***Strategies to Reduce the Over-Incarceration of Aboriginal People in Canada.*** The second report was an extensive bibliography on Aboriginal justice, which was a precursor to these annotations. It has been published as ***Breaking Down the Walls: A Bibliography on the Pursuit of Aboriginal Justice.***

I would like to thank the Solicitor General for contributing to this project; and to the President's Fund, University of Regina, for a grant to help finalize the project for publication. I would like to thank all those people across Canada, many listed in an appendice to this report, for their assistance in locating the material annotated. Special thanks to Bruce Spence who wrote most of the annotations, and to our past coordinator Mary Gianoli, who helped coordinate this project until her departure. Thanks again to long-standing research assistant Beryl Forgay who helped finish up the list of annotations. Our deep gratitude to Linda Bradley who, once again, created an attractive report out of a lot of scrawling and drafting of material. And finally, a thank you to our new coordinator Pam Janz, who had her initiation (some might say "trial by fire") helping put the final pieces together for this report.

It is our hope that this report and the Series of which it is a part will contribute in some small way to the creation of policy and program alternatives which help overcome the over-incarceration of Aboriginal people across Canada, especially on the prairies.

Jim Harding
Director
School of Human Justice

1. INTRODUCTION

1.1 Origins of Project

In March 1990 Prairie Justice Research (PJR) sponsored a western Canadian consultation entitled "Strategies to Reduce the Over-Incarceration of Canada's Aboriginal People."[1] This consultation identified the need to systematically review and provide details on Aboriginal controlled justice programs. As part of its commitment to research, PJR proposed this review as its 1990-1991 Special Project under the Ministry of Solicitor General's Contributions Agreement. After some negotiation to ensure that this was not redundant with an impending Federal Ministry of Justice report,[2] this project was accepted.

According to our proposal the review would focus on Aboriginal justice programs in Canada:

> **...that either provide or have the potential to provide, alternatives to incarceration. These would include programs that are directly related to the areas of policing and corrections. Such a project would be useful in identifying and describing concrete models of Aboriginal-run alternatives including those that are relevant to Aboriginal self-government.**
>
> **The project would be of special concern to Aboriginal organizations interested in developing demonstration projects, especially to prairie groups because of the characteristically higher incarceration rates in that region. The literature review and program profiles could be disseminated to a variety of organizations including Aboriginal groups, non-governmental organizations, policing and corrections personnel and to the judiciary. Some of these groups may be willing to collaborate with Aboriginal people to form community-based, interprofessional committees that would encourage and facilitate the expansion of new programs which provide alternatives to incarceration.**[3]

1.2 Working Definitions and Objectives

The working definition for selecting material to be annotated was:

> **Canadian Aboriginal-controlled/run justice programs. The term justice encompasses those programs which are preventative in their intent such as youth diversion or peace keeping programs. Materials which discuss justice policies or developments with a view to developing more Aboriginal initiatives and run programs in the justice area (those documents capturing the theme of transition or requesting change) will also be annotated."**[4]

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1 Prairie Justice Research, ***Strategies to Reduce the Over-Incarceration of Aboriginal People in Canada: A Research Consultation.*** Regina, SK: Prairie Justice Research, University of Regina, 1990.

2 ***National Inventory of Aboriginal Justice Programs, Projects and Research.*** Ottawa: Ministry of Supply and Services, 1990.

3 Abstract, proposed Special Project, "Alternative Aboriginal Justice Programs," May 16, 1990.

4 PJR Minutes, Annotated Bibliography, September 7, 1990.

This working definition clearly indicated the intent to operate on two levels: (1) specific Aboriginal-controlled programs and (2) concepts of such programs. This two-fold approach resulted from the first stage of gathering information, where it was found that some material pertaining to Aboriginal-controlled justice programs was more contextual and conceptual than programmatic. This material often addressed issues of control and self-government more explicitly. As such it was agreed that it should be reviewed. Originally we were even going to organize the material along these lines (contextual, programmatic) but as the annotations developed, this distinction could not be maintained.

The orginal questions posed, as a basis for doing the annotations, were:

1. Why and how was the program created?
2. Has the program reduced the incarceration of Aboriginal people?
3. What effect if any has it had on corrections?
4. How is Aboriginal control exercised?
5. How is the program funded and managed?
6. Is the program seen as a step towards self-government?
7. What effect if any has it had on self-government?
8. Does the program collect any information which would allow research?
9. Has the program been evaluated and, if so, what were the findings?[1]

These questions are all reflected in the categories used for the annotations which are discussed below in Section 2.3.

1.3 Difficulties Encountered

Undertaking this task has proven to be more challenging and difficult than orginally expected. For one thing, we found that to narrow down the literature on Aboriginal-controlled justice programs we had to first locate and assess a vast and quickly growing literature in Canada on Aboriginal justice. It was simply not possible to locate or decide what programs met the narrower criteria of this project without carefully scrutinizing a much broader array of material - spanning issues of criminal justice and self-government - which dealt with the broad questions of Aboriginal justice.

Once we began to document and categorize this vast and growing material we realized that we were already accomplishing an additional interdependent project. It seemed like a waste of time to not make the fruits of our labour more widely available so that others involved in policy and research in this area could see what literature was becoming available. Also, in view of a growing number of requests to PJR for resource and reference material in the broad area of Aboriginal justice, and the fact that our own report on ***Law and Order for Canada's Indigenous People***[2] was dated, we decided to complete a broader ***un***annotated bibilography as a precursor to this special project. The bibliography was therefore published

---

[1] PJR Minutes, Annotated Bibliography, July 4, 1990.

[2] Havemann, Paul; Couse, Keith; Foster, Lori and Matonovich, Rae. ***Law and Order for Canada's Indigenous People.*** Regina, SK: Prairie Justice Research, University of Regina, March 1985.

as a separate document.[1] There were other difficulties undertaking this project. First, there has simply not been a lot of information created on Aboriginal-controlled justice programs, and what exists is not always or easily accessible. Therefore the actual collecting of documents and reports fitting the narrower criteria has been far more time-consuming than expected.

Below we will outline the methods used to locate this material. We have no doubt that more time, effort and other methods would locate more material. But we do believe that the annotations that follow are fairly representative of the kinds of material in existence and that it can provide specific insights into emerging Aboriginal-controlled justice programs across the country.

Second, as we entered into the literature we were able to locate, it became clearer that it was going to be quite difficult to assess what constituted "Aboriginal-controlled." We do not feel we have fully resolved this matter. Rather, we have only laid out a framework for addressing the vital questions about how programming in the justice area may or may not co-evolve with and reinforce the processes of self-government.

Third, the actually categories used to organize and undertake the annotations remain problematic. It took some time during the first series of annotations, while trying out different approaches, to finally decide on the general categories to be used. We had to find out, through trial and error, which could actually be addressed with the kind of material we had located. As always in such formative research, there had to be a method of reviewing and analyzing which complements the material at hand.

In conclusion, though the number of annotations is relatively small, this selection comes out of a time-consuming process which actually generated another report. We believe what follows will provide the reader with the beginning of an overview of the kind of Aboriginal-controlled justice programs coming into existence across Canada. What follows should provide people working in program, policy and research in this area with the kind of information needed to consider more in-depth comparative or evaluative studies. It is our hope that this report will also provide another impetus to the creation and expansion of community-based, Aboriginal-controlled justice programs.

---

[1] Harding, Jim and Forgay, Beryl. ***Breaking Down the Walls: A Bibliography on the Pursuit of Aboriginal Justice.*** Regina, SK: Prairie Justice Research, University of Regina, June 1991.

2. METHODOLOGY

2.1 Bibliographic Search

A broad-based search for material on Aboriginal justice was undertaken to help locate material on Aboriginal-controlled justice programs. The bibliography of over 1,000 listings that resulted from this research was produced separately, as the second report in a three-part series on Aboriginal justice, of which this report constitutes the third report.

The material located through this search ended up being classified in the bibliography under six main heads:

1. Research Methodology
2. Criminal Justice System
3. Judicial Inquiries
4. Socio-Economic Issues
5. Self-Government
6. Self-Determination

Each of these was broken down into several substantive sub-heads which were, in turn, sub-divided in terms of the source of the publication (e.g., newpaper, periodical, reports/papers). Clarification of the sub-heads and where to place material on Aboriginal justice programs was essential in determining what to include in the annotations in this report. It was finally decided to create a sub-heading entitled "Criminal Justice Programs for Aboriginal People" as a sub-section under the main section on Criminal Justice System. This contained material on programs which did not involve Aboriginal organizations in delivery, and hence could not be considered, even minimally, to be Aboriginal-controlled or having to do with the evolution of self-government.

To contrast with this, Aboriginal-controlled programs were included under the section on Self-Government. This section was first sub-divided into "Canada," "The United States" and "Other Countries." These, in turn, were further sub-divided into "Territorial/Constitution," "Existing Aboriginal Justice/ Corrections Programs" and "Proposed Aboriginal Justice/Corrections Programs."

The material that ended up under "Existing Aboriginal Justice/Corrections Programs" in the section on Canada provided the preliminary list of material to be considered for annotating. Later, when new relevant material was located from the mail-out or following up on various leads, it was incorporated into the larger bibliography.

More detailed information on the methods used for the larger bibliography is provided in that report.

2.2 Mail-Out for Further Information

During summer 1990 an extensive list was assembled of 275 people and organizations involved in or knowledgeable about, justice programming in Aboriginal communties.[1] This list built upon the list and network assembled for the consultation held in March 1990. It included tribal councils and bands across Canada which were known or thought to have justice programs. Many of these came from the ***National Aboriginal Directory***.[2] Additional addresses came from government reports.

This list was then sent a letter requesting literature on "...alternative justice and corrections programs run by Aboriginal people as part of their movement towards self-determination." Alternatives was defined broadly to include:

> **...band or tribal police forces, spiritual programs for correctional centre inmates, bush camps, programs aimed at young offenders, community-based mediation programs, community-based sentencing and probation options, and indigenous judicial or legal systems that parallel the Canadian criminal justice system.**

Literature, too, was defined broadly to include "...proposals, annual reports, research papers, doctoral thesis, political position papers or books" (see Appendix 1). The letter was sent in mid-July and asked for a response by mid-August.

A broad range of programs was mentioned in the letter in the hope that PJR's project would not exclude programs or material on the basis of the researchers' preconceptions. The definition of "Aboriginal-controlled" implied in the letter even included some programs (e.g., spiritual, cultural) operating within the dominant criminal justice system because some Aboriginal groups see these to be on a continuum of self-determination. These and other programs operating within the dominant system might not be accepted by some as a form of self-determination which actualized self-government. However, as long as there continues to be such over-incarceration of Aboriginal people, any move towards more Aboriginal control, even within prisons themselves, is likely to be seen as a step in the right direction.

A broad range of literature on these programs was mentioned in the hope that people would submit any type of information on Aboriginal-controlled programs. Our past consultations and initial investigations, including literature searches, convinced us that there was very little published information on the emergence of such programs.

2.2.1 Profile of Responses

The responses to the mail-out were all very helpful, but not extensive in number. We received 21 letters providing direct assistance or advice, and another 6 people responded by phone or message. These 27 persons amounted to 9% of those mailed the letter.

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[1] This list is available upon request.

[2] ***National Aboriginal Directory***. Winnipeg: Arrowfax, 1989-90.

Though small, the list is a very interesting one (see Appendix 2). As shown in Table 1, it includes people from 7 provinces or territories. Twelve of the 26 for which sector and location are known are from Aboriginal organizations. In addition responses came from the Manitoba and Alberta inquiries on Aboriginal justice. Only 6 people directly associated with Aboriginal programs replied. This may reflect the lack of documentation regarding Aboriginal control of justice programs across the country. Only 3 of these replies from programs were from the prairies or west where most of the over-incarceration of Aboriginal people occurs. Moreover, none of these were from programs in Saskatchewan, which has the highest rate of incarceration of Aboriginal people (on a per capita basis) of anywhere in Canada.

Most Aboriginal replies (6), however, were from the prairies or west. It is also noteworthy that the largest grouping of non-Aboriginal replies (5) were from federal Ministries, primarily the Solicitor General. This suggests that information on Aboriginal justice programs still remains fairly concentrated in a few places.

Table 1
SECTOR AND LOCATION OF RESPONSE TO MAIL OUT

Province/Territory

Sector	B.C.	Alta.	Sask.	Man.	Ont.	Que.	NWT	TOTAL
Aboriginal Government			1	1		1		3
Canadian Government			1		4[a]			5
Aboriginal Media	1	1						2
University	1	1	1		3			6
Provincial Inquiries		1		1				2
Aboriginal Inquiries		1[b]						1
Aboriginal Programs		1		2	1	1	1[c]	6
Crim. Justice System			1[d]					1
TOTAL	**2**	**5**	**4**	**4**	**8**	**2**	**1**	**26[e]**

a. All federal.
b. Inquiry on health care.
c. Economic Development Corporation.
d. Saskatchewan Court of Appeal.
e. One person's affiliation/location not know.

We are tempted to speculate that the lack of control of such information among Aboriginal communities and organizations is itself one major reason why we received so few responses from Aboriginal groups. The results of this mail-out and the apparently limited material available on Aboriginal-controlled justice programs quite likely reflects the general lack of self-determination operating in this area of programs. It may also reflect the relatively low priority of justice programs within some Aboriginal organizations. This, in turn, may reflect an emerging system of stratification which separates Aboriginal people who are incarcerated and/or involved in the criminal justice system, from those presently in control of Aboriginal governmental organizations. Land entitlement and constitutional issues are the priority for these groups. These issues, potentially, all directly relate to justice matters, especially if a parallel justice system comes into existence. That does not mean, however, that justice programs are themselves a high political priority, at least not yet.

Had we had time and resources to do more follow-up of our mail-out, we would definitely have been able to increase the responses. However, there would have been no point to this, even if we could have afforded it, since we have not been able to annotate all the material received or suggested without doing such a follow-up. Our small project, with a budget of only $10,000, was simply not equipped to do an extensive follow-up of all suggestions and sources.

When we started the process in 1989 which led to this and the related reports, Aboriginal justice issues were moving into mainstream Canada. This was in part due to the Commission of Inquiry on Donald Marshall, Jr. Since then, through a combination of more inquiries, and major confrontations over Aboriginal land entitlements (especially at Oka, and also over the Old Man River diversion), the interest in and literature on Aboriginal justice and self-government has greatly expanded. Some of this literature has to do with Aboriginal-control of justice programs; but a new and much more costly approach would be required to reassess the material available.

This was never intended to be anything but a preliminary report which suggested trends and lines of further program development and research. We will leave it to others or to future PJR projects to do the necessary direct research on the nature and consequences of the quickly accelerating number of Aboriginal-controlled justice programs across Canada.

2.3 Categories of Annotations

The categories finally decided on for each annotation were:

1. Literature/Program Profile
2. Aboriginal Control
3. Funding
4. Impact on Self-Government
5. Program Evaluation
6. Does the Program Reduce Incarceration?

Though small, the list is a very interesting one (see Appendix 2). As shown in Table 1, it includes people from 7 provinces or territories. Twelve of the 26 for which sector and location are known are from Aboriginal organizations. In addition responses came from the Manitoba and Alberta inquiries on Aboriginal justice. Only 6 people directly associated with Aboriginal programs replied. This may reflect the lack of documentation regarding Aboriginal control of justice programs across the country. Only 3 of these replies from programs were from the prairies or west where most of the over-incarceration of Aboriginal people occurs. Moreover, none of these were from programs in Saskatchewan, which has the highest rate of incarceration of Aboriginal people (on a per capita basis) of anywhere in Canada.

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2. Aboriginal Control
3. Funding
4. Impact on Self-Government
5. Program Evaluation
6. Does the Program Reduce Incarceration?

7. Recommendations (from report)
8. Further Research
9. Comments

These categories are justified and qualified as follows:

1. **Literature/Program Profile**

   The reader should gain an overview of the Aboriginal-controlled programs, for information and comparison. We have not attempted to research these programs directly or through other documentation that may exist. Some replies with additional information on programs were obtained after a mail-out to solicit more sources on Aboriginal-controlled programs and these were included where appropriate.

2. **Aboriginal Control**

   Readers should know, as specifically as possible, the way Aboriginal control is exercised and in what way this program fits the criteria for inclusion. We are not attempting to eva'uate the varying ways Aboriginal control is exercised. However, the fact that we have ruled out programs run and operated within government institutions or agencies for annotations does imply that "autonomy" is considered to be an important part of Aboriginal control.

3. **Funding**

   Since funding sources are central to matters of control, both in actuality and symbolically, it is necessary for the reader to know what information was available on funding. Some people would argue that as long as there is any dependence on federal or provincial funding, programs are not Aboriginal-controlled. We rejected this definition since it would rule out many important program initiatives. We, however, believe this financial dependency should be known so that it can be assessed.

4. **Self-Government**

   It is important for the reader to know if the program is seen to be related to the quest for Aboriginal self-government and/or whether any information in the report about the program suggests anything about such a relation. Though we are probing these views of self-government, we are not assessing them. The range and type of views located through these annotations, however, could help provide a preliminary typology for such an inquiry.

5. **Program Evaluation**

   We want the reader to know if anything is included in the report that evaluates the program and/or whether information is contained which could contribute to such an evaluation. We are not undertaking or implying an evaluation of the effectiveness of the program by anything we say in the annotations.

6. **Reducing Incarceration**

It is important for the reader to know if the program is interested in reducing Aboriginal incarceration and/or considers it to be doing this. We realize that systematic research would be required to establish any such relationship between these programs and the prevention of incarceration. Still any ideas suggested about this in the literature may help clarify how to undertake such research.

7. **Recommendations**

It is vital for the reader to know if those running, describing or analyzing the programs make any suggestions and/or recommendations about changing the programs. We are not, however, making any recommendations based on these annotations. Though the recommendations are contextualized, they are not evaluated.

8. **Further Research**

The reader should know if the author(s) of the material being annotated suggest any lines of research on these programs. The reviewer also includes some suggestions about future lines of research. There is no attempt being made to assess the value of these suggestions nor to propose methodology.

9. **Comments**

The reviewers and others on this project were actively engaged in thinking about these programs and the issues of control, decarceration and self-government. The reader should know the kind of qualitative considerations and judgements being considered by those reviewing this material. There has been no attempt to systematize these comments. They are largely the result of the reviewers raising questions in the process of gaining their unique overview and expertise about material in the area.

2.4 Organization of Annotations

The annotations that follow are organized into 5 areas:

1. General
2. Policing
3. Courts
4. Corrections
5. Diversion

This, in part, reflects the way the dominant legal process directly affects Aboriginal people - from arrest to incarceration. The overall concern is whether Aboriginal-controlled programs at any stage in this legal process can prevent or reduce involvement in the criminal justice system. A "General" category was required for documents which discussed Aboriginal control of justice programs but did not specifically discuss programs under the other headings. A category on "Diversion" was included since some of the

7. Recommendations (from report)
8. Further Research
9. Comments

These categories are justified and qualified as follows:

1. **Literature/Program Profile**

   The reader should gain an overview of the Aboriginal-controlled programs, for information and comparison. We have not attempted to research these programs directly or through other documentation that may exist. Some replies with additional information on programs were obtained after a mail-out to solicit more sources on Aboriginal-controlled programs and these were included where appropriate.

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It is important for the reader to know if the program is interested in reducing Aboriginal incarceration and/or considers it to be doing this. We realize that systematic research would be required to establish any such relationship between these programs and the prevention of incarceration. Still any ideas suggested about this in the literature may help clarify how to undertake such research.

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The reader should know if the author(s) of the material being annotated suggest any lines of research on these programs. The reviewer also includes some suggestions about future lines of research. There is no attempt being made to assess the value of these suggestions nor to propose methodology.

9. Comments

The reviewers and others on this project were actively engaged in thinking about these programs and the issues of control, decarceration and self-government. The reader should know the kind of qualitative considerations and judgements being considered by those reviewing this material. There has been no attempt to systematize these comments. They are largely the result of the reviewers raising questions in the process of gaining their unique overview and expertise about material in the area.

2.4 Organization of Annotations

The annotations that follow are organized into 5 areas:

1. General
2. Policing
3. Courts
4. Corrections
5. Diversion

This, in part, reflects the way the dominant legal process directly affects Aboriginal people - from arrest to incarceration. The overall concern is whether Aboriginal-controlled programs at any stage in this legal process can prevent or reduce involvement in the criminal justice system. A "General" category was required for documents which discussed Aboriginal control of justice programs but did not specifically discuss programs under the other headings. A category on "Diversion" was included since some of the

literature located discussed Aboriginal-controlled programs such as those dealing with alcohol and drugs or youth programs which were indirectly involved with preventative measures and self-government.

We noteably do not have a category on "parallel justice" because no such program-specific literature was located. Literature on the general need for a parallel Aboriginal justice system clearly exists and is growing. Some of this is discussed under the "General" category, and some is referred to under section 2.6 on "Other Sources."

2.5 Cross-Cultural Considerations

There are cross-cultural issues that had to be addressed in this project. It is possible and probable that non-Aboriginal people would not be aware of issues and nuances about Aboriginal control and self-government that should be central to the review. Therefore an Aboriginal researcher, trained as a journalist, was responsible for drafting most of the annotations. He had full input into the questions and general categories used in the preliminary annotations. These drafts went through a more thorough collaborative re-examination also involving the principal investigator and PJR's research coordinator. These discussions attempted to separate comments based directly on the report, from commentary about implications of the report for issues of Aboriginal control and self-government. In the rewrites that followed some material that was previously under another heading was relocated into the category "Commentary." It was our feeling that the careful, comparative reading warranted a section where those pertinent insights could be recorded.

2.6 Other Sources of Information

This report is not attempting to duplicate other material which is directly or indirectly relevant to this project. Two academic bibliographies and one government inventory are already in existence which refer to programs some of which might be considered Aboriginal-controlled. These should be utilized in their own regard. There will be some duplication in terms of programs discussed, but we have tried to base our annotations on other literature. There has been no attempt to incorporate information from these sources into our project. If our literature search or mail-out brought a publication to our attention which was also listed in another publication, then there will be an overlap.

Clearly the need remains for a project which attempts to do this overall integration of material. It is, however, too early in the development of Aboriginal-controlled justice programs for this to occur.

The three additional major sources of information pertaining to Aboriginal justice, including Aboriginal-controlled justice programs, are:

1. P. Havemann et al. ***Law and Order for Canada's Indigenous People.*** Regina, SK: Prairie Justice Research, Unviersity of Regina, March 1985, 187 pages.

This literature review includes annotations of material "...relating to the operation of the criminal justice system and Canada's Indigenous People" (A Review of Recent Research Literature Relating to the Operation of the Criminal Justice System and Canada's Indigenous People). It is organized into five chapters. The first is an introduction about "competing explanations for the over-involvement of indigenous peoples within the criminal justice system." The next three follow the criminal justice system, from "law enforcement" through "The Criminal Court Process" to "Sentencing, Overrepresentation in Prisons" and "Alternative Dispositions." The concluding chapter addresses "Implications for Research and Policy." Each of these chapters is broken down into sub-topics some of which have policy and/or program implications.

The annotations include the broad range of documents that could be located in the mid-1980s. These are firmly placed within the context of the theoretical positions and debates that often underlie various policy options pertaining to Aboriginal justice. This document also remains a valuable resource on and evaluation of programs that attempted to develop alternatives to incarceration. While it was not explicitly organized around issues of "self-government," it provides some of the best analysis for the incorporation of these issues into the discourse on alternatives to over-incarceration of Aboriginal people in Canada.

2. Horn, C. and Griffiths, C.T. ***Native North Americans: Crime, Conflict and Criminal Justice: A Research Bibliography.*** Burnaby, BC: The Northern Justice Institute, 4th edition, 1989, 275 pages.

This 1989 unannotated bibliography is similar in makeup and scope to the second report in our Aboriginal Justice series entitled ***Breaking Down the Walls: A Bibliography on the Pursuit of Aboriginal Justice.***The content differs due to it being an earlier report, and due to the differing methods and sources of compilation.

The second section, on "Northern Law and Justice," in particular, is helpful for researching Aboriginal-controlled justice programs. There is apparently much more Aboriginal (Dene, Inuit) involvement in justice programs in the Yukon and N.W.T. than elesewhere in Canada. This is probably a reflection of the fact that the majority of the population in these areas is Aboriginal, and the advances being made regarding devolution of federal authority towards provincial status and/or self-government. The sub-topics (northern justice, customary law, self-government/sovereignty, community-based justice inititives and victimization) all directly or indirectly relate to issues of Aboriginal control, decarceration and self-government.

3. ***National Inventory of Aboriginal Justice Programs, Projects and Research.*** Ottawa: Minister of Supply and Services Canada, 1990.

This document, prepared by the federal Ministry of Justice, is the most exhaustive listing to date of justice programs with Aboriginal involvment. According to our count 110 listings of the more than 250 programs, projects and studies included, have some Aboriginal involvement. Only a few of these are the same ones as those discussed in our annotations.

This list would be a good start for an exhaustive compiling of information. Actual community-based programs could be written and, ideally, visited to begin to collect program material. This would be a major project.

The information contained in the report was compiled for very different purposes than ours. The main purpose was to give provincial and federal governments information "...about what programs and initiatives are being undertaken, and what works and what doesn't in the area of Aboriginal justice" (Executive Summary, p.XIX). While this latter purpose (what works or doesn't work) is clearly relevant to our project, there is really no systematic information provided which would allow such judgements. Furthermore, all the information in the Inventory was "...originally prepared by each province, territory and federal government department represented in the inventory" (p.XVII). There is no indication that any Aboriginal groups were consulted about these Aboriginal justice inititives. Such direct and equal participation would be essential before any evaluation of programs could be undertaken.

Some information in the inventory could, however, assist with an expansion of our project. The one or two pages on each program does contain some information which would fit under our categories on program profile, funding and program evaluation. Our project, however, is based on annotations of literature existing on programs. We have not included any information on the same programs being reviewed that exists in this inventory since it would not follow the format of the annotations.

2.6.1 Profile of National Inventory

Because of the extensive work done to prepare this inventory on Aboriginal justice programs we wanted to be sure there was not redundancy with our own project. In particular, we wanted to find out if there was any overlap between the programs profiled as ones pertaining to Aboriginal justice by provincial and federal governments and ones identified through our method and criteria as involving Aboriginal control.

To do this we separated out the listings in the inventory which referred to justice programs involving Aboriginal people. As stated above, this involved about 110 listings of the more than 250 inclusions. We then reduced the number to 103 due to some listings being for the same programs. We then further narrowed the remaining programs down to those where the delivery system - in whole or in part - was in the control of Aboriginal organizations or communities. This reduced the number of programs to 77, with the remaining 25 involving government control over delivery. We then categorized these two groups of programs. For this

purpose we used the same categories as used for the annotations (general, policing, courts, corrections, diversion).

The number of programs by categories that met the criteria are included in Table 2. The list of actual programs is contained in Appendix 3. Before commenting on these findings we should say, at the start, that only a few programs specifically discussed in our annotations (e.g., Amerindian Police Service, Rediscovery Program) were located in this inventory. There is, understandably, some general overlap of the broad areas of Aboriginal justice programs, particularly having to do with policing and courtworkers. There is not, however, much specific overlap between this inventory and our project. This may, in part, be due to there being no literature available through searches or through Aboriginal organizations on the bulk of the programs listed in the inventory.

Furthermore, many of the programs listed in the inventory as delivered by Aboriginal groups were actually contracted out services from government agencies. As such it would be debateable how much Aboriginal control was being exercised.

Table 2
ABORIGINAL JUSTICE PROGRAMS LISTED IN NATIONAL INVENTORY

Jurisdiction	General	Policing	Courts	Corrections	Diversion	TOTAL
Canada		(9)[a]	8	1 (1)		9 (10)
British Columbia		1		2	6	9
Alberta		3 (1)	3 (3)	12 (1)	6 (1)	24 (6)
Saskatche-wan	1			1	1	3
Manitoba	1	2	2	(1)	7	12 (1)
Ontario	1	2 (1)	1	1	3	8 (1)
Quebec		4	(1)			4 (1)
New Brunswick		(1)		(1)		(2)
Newfound-land				(1)	1 (1)	1 (2)
N.W.T.	1		(2)	1	2	4 (2)
Yukon				1	2	3
TOTALS	**4**	**12 (12)**	**14 (6)**	**19 (5)**	**28 (2)**	**77 (25)**

a. Numbers in brackets refer to programs delivered by government or other non-Aboriginal organizations. The rest were delivered in whole or part by Aboriginal groups.

We are not saying that these programs delivered by Aboriginal groups would not fit somewhere on our continuum of Aboriginal control. It is, however, clear that the list of programs on Aboriginal justice was not assembled by governments in terms of the potential for realizing self-determination and self-government.

Clearly, this government inventory could provide another starting point for systematic research on Aboriginal justice, including Aboriginal-controlled programs across Canada. The listing of the 77 programs is likely the most inclusive available. The inventory lists some references on these programs that could be studied as an additional source of information. These references, for the most part, are not the kind which would surface in a bibliographic search for research literature, but they may provide important descriptive and evaluative information nevertheless. Furthermore some of the listings in the inventory having to do with projects and studies, might provide an additional source of reference material on Aboriginal justice. No attempt has been made to incorporate these into the larger bibliography or into the material annotated in this report. The apparent lack of duplication of programs suggests that this inventory and our document provide a fairly distinctive look at programs pertaining to Aboriginal justice.

3. ANNOTATIONS
3.1 General

3.1.1 Federation Of Saskatchewan Indian Nations. *Customary Law Field Reports.* Opekokew, Delia, FSIN 1984

Literature/Program Profile

This is a report based on a series of field interviews conducted by the FSIN in the early 1980s as part of research into Indian justice issues in Saskatchewan. The report touches on elders' perceptions of traditional Indian justice practises and on views held by younger people involved in more contemporary programs such as the courtworkers, band politics, educational facilities and alcoholism counselling. The report serves the dual purpose of placing the Justice issue affecting Saskatchewan Indians into an historical context as well as critiquing modern programs and the criminal justice system of the dominant culture.

Aboriginal Control

The question of Aboriginal control is dealt with in a somewhat hypothetical way. The Federation of Saskatchewan Indian Nations was essentially in charge of the survey that went into production of this document. The survey participants contend that Aboriginal control over a number of educational, political and criminal justice institutions is insufficient. They advocate Aboriginal control of these institutions.

Funding

There is no information on funding for the research project or for what increased Aboriginal control over the judicial/political institutions would cost.

Impact On Self-Government

The views expressed by some of the chiefs and younger institutional workers are similar to those of the elders who participated in this survey. There is an underlying consensus expressed by most of the participants that the Canadian and Saskatchewan governments, of which the criminal justice system is just one aspect, has had a devastating and far-reaching impact on the ability of the Aboriginal nations to govern themselves. It should be pointed out that the level of judicial self-determination suggested in this 1984 report has not yet been achieved in 1991. If this level were reached the impact on self-government would be substantial.

Program Evaluation

The research methodology was simple but effective. The researchers visited four Saskatchewan Reserves: Little Pine, James Smith, Cowesses and Thunderchild. These reserves are spread out around the south east, south central and west central parts of the province and are culturally Plains Algonkian. The researchers conducted interviews with band elders knowledgeable about traditional methods of government and justice and recorded their comments. The survey was conducted without a set questionnaire but with a fairly consistent line of questioning. They also interviewed band employees and chiefs of the James Smith and Cowesses reserves. These views were compiled in this volume.

Does The Program Reduce Incarceration Levels?

Not applicable.

Recommendations

Formal recommendations are not listed. However, the opinions expressed at various points could possibly be interpreted as recommendations. With this in mind, the main recommendation being made is that Indian bands should regain control of their own institutions, including a judiciary and maintain social order within the bands utilizing traditional methods as closely as possible.

Further Research

This survey covered only four communities and one cultural group. There are other cultural and linguistic groups in Saskatchewan and there are 72 reserves. More research is needed that would follow a similar approach but would encompass a larger area and more communities. As the field reports stand right now, only the views of a handful of elders have been recorded. There are more elders and they are not going to be around forever. Their views and the views collected over the course of previous studies should be considered in the development of more traditional Indian justice institutions. A coherent strategy could be developed using this research that could conceivably restore an acceptable level of Aboriginal self-determination containing a parallel Aboriginal justice system.

Comments

The Customary Law Field Reports were prepared almost seven years ago in 1984 by an organization whose stated mandate is to provide political representation for Aboriginal communities located within Saskatchewan. Since the research was conducted and the reports tabled, no perceivable political action has been initiated to achieve the level of self-determination advocated by the persons who participated in the study. In the meantime, incarceration of Aboriginal people in correctional facilities has remained at unacceptable levels.

3.1.2 Ontario Native Women's Association (ONWA). *The Justice Development Program of the Ontario Native Women's Association.* Barret, ME. October 1984.

Literature/Program Profile

ONWA is an organization based on local chapters spread throughout Ontario. The Justice Development Program (JDP) was one of two pilot projects initiated by the Ontario Native Council on Justice. This report describes the JDP's first year of operation which ended in July of 1984. The project was multi-faceted and aimed at women and Aboriginal youth in three Ontario communities. The projects are considered to be "community based" and ONWA organizers say the principle of social change through community action was stressed in their development (p.6). The following are brief descriptions of the three community projects that made up the JDP:

McDiarmid-Rocky Bay: after a series of meetings with community members it was decided a youth program with a strong focus on Aboriginal spiritual and cultural awareness was needed. A grant was received from the federal Secretary of State department for the establishment of a drum and dance group that would acquire instruction from a well known teacher from Thunder Bay. According to ONWA, the group "caught the imagination of the entire community" (p.9), and a small scale cultural reawakening soon took place. However, the project's impact was difficult to quantify. The ONWA local said the project had a "salutary" effect that should be followed up (p.9).

Geraldton: some 3,000 people live in this fairly large northern Ontario centre. Many federal and provincial government agencies have field offices located there. There is a high Aboriginal population in the area, both on and off reserve. According to ONWA, young people of Aboriginal ancestry account for 40 per cent of court cases for that particular age group (p.10). It was decided that a preventive or diversionary type of program was needed. A native youth alternatives program was proposed but due to internal ONWA politics and government restraint measures, the project was "put on hold" (p.11).

Osnaburgh: this is a remote community in northwestern Ontario suffering from what is labelled as serious social deterioration. The author reports this community is suffering from "conditions by no means acceptable in Canadian society" (p.12). A series of meetings between area band councils, ONWA and the federal and provincial governments took place. It was decided that because of a serious increase in violent crime on the Osnaburgh reserve, measures had to be taken to restore law and order. However, at the time this document was submitted, no programs had been implemented (p.12).

Aboriginal Control

No specific information is provided with respect to ONWA's internal political organization, its affiliation with treaty Indian and Metis organizations or with federal and provincial government departments. There were some references made by the author to local ONWA boards of directors working with these other groups in setting up and being responsible for the JDP.

Funding

Project proposals were drafted but not funded. There are very few figures or specific funding sources outlined.

Impact on Self-Government

Though self-government is not singled out as an issue, one of the objectives of the justice program was to help people from the target communities gain more control over their lives.

Program Evaluation

Members of the targeted communities participated in planning and developing the justice projects. They identified the major problems to be addressed, ways of dealing with them and implemented actions to the best of their abilities under their circumstances. Some statistics were mentioned but not in very much detail.

Does the Program Reduce Incarceration Levels?

The projects were intended to reduce contact between aboriginal young people and the criminal justice system but this document is not equipped to answer how or to what extent this was ever accomplished.

Recommendations

There were no specific recommendations made other than that something very immediate and very decisive had to be done to resolve serious conflicts within the communities mentioned.

Further Research

The need for further research was not addressed by the authors in this report. Nor was there any indication that any earlier or later documented evidence was ever prepared. Incarceration rates should be measured. Government records could be used or ONWA could start maintaining records on their own. Over a period of time it would become clear if the incarceration rates, or contact with the criminal justice system rates are being reduced in conjunction with the implementation of the ONWA Justice Development Program or similar programs. More updated material is needed. Have any similar programs been implemented since 1984 and if so has there been any significant drop in criminal justice system contact as a result of such programs? Have incarceration rates or contacts with the criminal justice sytem increased since 1984?

Comments

This report was an emotional appeal for action to deal with serious community breakdown manifested in conflict with the criminal justice system among Aboriginal women and youth. There was very little actual researchable data included. This document is important because it gives a sense of the stage Aboriginal justice program development had reached in 1984.

3.1.3 Saddle Lake Tribal Justice Centre. *Tribal Justice Manual.* (Volume 1) Saddle Lake Band. Saint Paul, AB. (No date). (Volume 2: unavailable for annotation).

Literature/Program Profile

This volume of the Justice Manual sets out the structure of the Saddle Lake reserve's proposed system of government of which a judicial system is an intergral part. The band government is a large one that administers 23 departments through 15 committees and boards (p.9). Brief descriptions of each department are included. The manual also proposes a justice administration model that was approved in principle "for further evolvement" by an authorizing resolution approved by a majority of the band council (no date or page number). The main goal of this justice model is to "take control and administer" the band's own justice system. Jurisdiction of this justice system would be within the reserve. The manual proposes a two tier system that would operate under the umbrella of a five member justice commission (p.47). Tier one consists of a "peacemaker" who mediates minor disputes in the areas of civil, family and "juvenile" matters (p.44). Tier two consists of a "Tribunal of Jurors" with powers established by chief and council through statutes. The tribunal would take over for more serious matters or when the Peacemaker is unable to mediate a satisfactory settlement of a dispute (p.45). The manual suggests wording for band statutes to establish the justice commission, it suggests procedures to conduct the administration of justice, contains a proposed code of ethics, and includes an appended U.S. model of judicial conduct for Indian court judges (p.S-2).

Aboriginal Control

The development of this manual and of the proposed justice administration model appears to be under the control of the Saddle Lake band council and the people of the band. The band council represents what is known as a "custom of the band" administration. This arrangement puts control of the band's election and referendum procedures, to a certain degree, outside the limitations of the Indian Act by allowing bands choosing this option to determine their own election and referendum regulations. The Manual proposes a model of self-government with a judicial system as its major institution. The Manual says the people and the government of the Saddle Lake "Tribe" are sovereign.

Funding

There is very little space devoted to funding issues. There is no information about funding of the research that went into preparation of this manual, how the research centre which grew out of the project was/is funded or by whom, for how much or for how long. Nor are any projections included with respect to how much such a system would cost when realized or how it would be paid for. What is mentioned is that a proposal was prepared in the fall of 1983 and submitted to the Alberta Law Foundation. Funding was approved in 1984, according to what appears to be a band council resolution, and approved again for 1985-86 for a research centre (p.22).

Impact On Self-Government

The band has stated in the manual that a judiciary is "one of the key institutions missing from a total governing capacity and authority" (p.21). If the band followed through with developing their own justice

commission, self-government at the local level would be enhanced. It would require more research to accurately assess any impact that may have occurred since the manual was written.

Program Evaluation

The manual is weak in presenting sources of information, especially in interpreting customary Cree law. Interpretations of Cree law cover several areas: "tribal customs for band elections" (p.29), childcare, domestic relations, dispute resolution and more. However, no informants are identified nor methodolgy outlined. For example, how many of the elders interviewed concurred that under customary domestic relations "courtship was unheard of," (p.32) or that if a man saw his sister committing adultery "he would just walk up to her and kill her" (p.34). There also seems to be insufficient consideration given to applying the spiritual or social principles underlying customary law to the modern concepts suggested in the manual. However, the concept of developing what amounts to an autonomous band judicial mechanism is an apparently sound one.

Does The Program Reduce Incarceration Levels?

Over-representation of Aboriginal people in penal institutions is mentioned in passing but it is not the focus of this manual. The justice system takeover was in the planning stages at the time of the manual's preparation. Whether reduced incarceration levels have resulted by such a move is difficult to assess.

Recommendations

Several far-reaching recommendations and propositions are interspersed throughout the manual, all having to do with the takeover of judicial institutions. For example: "That the Saddle Lake Tribe since it has asserted its original and inherent sovereignty and treaty rights establish a tribal justice system on that authority and right" (p.39); or: "That the Saddle Lake Tribe claim total function/jurisdiction over criminal and civil matters upon the territory of the tribe, exercising criminal jurisdiction where applicable; exercising full civil jurisdiction and having the authority of judicial review" (p.40). There are other recommendations made for the takeover of child welfare and other institutions and for the interpretation and codification of customary law.

Further Research

The manual's authors made no specific recommendations for further research. There is very little reference in Volume 1 with respect to the band's proposed judiciary and its relationship with the Alberta and Canadian criminal justice system. There is room for further research here, if it is not handled in Volume 2. There are also few references to the issues of high Aboriginal incarceration levels or alternative on-reserve correctional facilities or sentencing alternatives. It may also be worthwhile to consider what impact may be felt as a result of recent Aboriginal justice inquiries occurring in Alberta and other jurisdictions. More input from elders and spiritual leaders from reserves other than Saddle Lake is needed to expand the argument of basing the bands justice system on traditional practises and values. A question to be considered is, what is the role of the traditional elders, are they strictly advisors with all veto power going to the chief and council, or do they have judicial and political power? There are a number of primary and secondary historical sources and anthropological works that could be used for this. There is also the question of how this local Indian justice system would fit into the larger context of the Cree Nation which is comprised of a number of bands spread over a large geographic area. How would local judicial decisions affect the whole nation?

Comments

The manual presents a viable way for a band to run its own justice affairs as part of its self-government. It is a practical model open for improvement. It would be interesting to see if the reserve has been able to implement any of the modelled institutions since the manual was first prepared sometime in the mid 1980s. If the band's justice system has in fact been brought to fruition, how did this come about, and if not, why not?

3.1.4 Federation of Saskatchewan Indian Nations (FSIN). *Indian Justice Institute.* Doug Cuthand and Associates. Saskatoon, SK. March, 1990, 16 pages and 7 appendices.

Program/Literature Profile

This is an outline for an Indian controlled Justice Institute that would be part of a Saskatchewan Indian justice system. The institute is the system's educational component. The Saskatchewan Indian Federated College, the Saskatchewan Indian Institute of Technology and the Saskatchewan Indian Cultural Centre would develop programs to train Indian people to work in all areas of the proposed justice system. This includes lawyers, judges, police officers, court workers, alcohol and drug abuse counsellors, youth workers, etc. The Institute would also develop the justice system as a whole. For example, its stated objectives are to i) involve Indian people in the justice planning process; ii) develop Indian common law; iii) develop model delivery mechanisms for an Indian justice system; iv) identify justice needs; v) identify legislative problems; vi) develop professional training programs.

Aboriginal Control

Control of the Institute and the proposed justice system is to be exercised through FSIN. FSIN is the political voice of Treaty Indians in this province. The Chief's Legislative Assembly of the FSIN consists of the chiefs, councils and appointed delegates from the 72 reserves in Saskatchewan. They meet four times per year at various locations. Resolutions passed by the FSIN in 1984 and 1990 which call for the establishment of a justice system and an institute are appended by the authors.

Program Funding

Funding is not discussed. No indication is made whether funding of any level is to come from the federal or provincial governments or through taxes levied by band governments. There are no cost projections made.

Program Impact on Self-Government

It is implied that the justice system and the Institute are integral to the Indian self-government process. Since a justice system forms a fundamental component of a self-determining nation it can be assumed that development of this system would have a direct impact on self-government.

Program Evaluation

Not applicable.

Does the Program Reduce Incarceration Levels?

Reduction of incarceration levels is not mentioned in the objectives and since the Institute/system is only in the proposal stage it is impossible to determine how these levels will be affected. More than one subsequent scenario is possible. Incarceration levels could remain the same for a period of time except Indians would be running the correctional facilities. They may increase, or they may decrease significantly.

Recommendations

Several recommendations are made by the authors, such as the development of a more community based judicial system, the resurrection of the Indian Justice of the Peace Program, exploration of the mediation process, the development of on-reserve correctional facilities, the use of Indian religious ceremonies to instill a sense of spirituality in offenders (p.9, 10). These recommendations are made under the heading: "Program Areas To Be Developed." The areas are Enforcement, Judicial, Restitution, Rehabilitation, Victim Compensation and Recognition, Education and Professional Development.

Further Research

The author says the above recommendations should be carried out after being thoroughly researched. It is proposed the research be conducted by the Justice Institute once it is established.

Comments

Other areas that should possibly be researched but which are not referred to are fiscal arrangements, the scope of powers the Indian Justice System would exercise, how justice was addressed historically among the Indian Nations of Saskatchewan and how the historical model could be adapted to contemporary times. The document does not provide a very complete picture of what constitutes the Indian justice system or the Institute. The bulk of the document consists of papers and reports published by other groups.

3.1.5 Federation of Saskatchewan Indian Nations. *Legislative Assembly Resolution Reference Number 448: Indian Justice System.* Regina, SK. 31 January 1990.

Literature/Program Profile

This resolution calls for the establishment of an Indian justice system in Saskatchewan. It reaffirms a commitment to follow guidelines established by a more comprehensive resolution that was carried by the Federation of Saskatchewan Indian Nations (FSIN) in 1984. The 1984 resolution is included in this bibliography.

Aboriginal Control

Control of the proposed Indian Justice System would lie with the FSIN, which represents Indians in Saskatchewan. The central body within the federation is the Chiefs Legislative Assembly which is made up of chiefs, councillors and selected delegates from the Indian band councils in this province. In order to attend to matters of common interest, four main legislative assemblies are held each year at various locations around the province. The proposed justice system would be a principal component of this form of government.

Program Funding

Funding is not addressed by this resolution.

Program Impact on Self-Government

Self-government is referred to in this and other resolutions as an inherent right that includes a justice system controlled by the First Nations. This resolution is an act of self-government by an identifiable Aboriginal people. However, any impact cannot be measured at this time because the justice system has yet to be fully developed and implemented. Once this is accomplished, the system's impact would be significant, because these people are presently under the jurisdiction of the federal and provincial criminal justice systems.

Program Evaluation

This resolution points out the FSIN's intent is to re-establish what sounds like an autonomous Aboriginal justice system. It does not spell out a process by which this would be accomplished. However, FSIN has conducted research into how justice was handled in the past. This research, some of which is included in this bibliography, appears to back up the passing of this resolution.

Does the Program Reduce Incarceration Levels?

At this stage there is no way of knowing how present incarceration levels would be affected by a return to more traditional methods of Aboriginal justice. But in the long term, a return to a separate Indian justice system could conceivably reduce high Aboriginal incarceration levels in non-Aboriginal correctional facilities.

Recommendations

No specific recommendations are made.

Further Research

No further research is suggested in this resolution. However, the development of an Indian justice system implies that research has to be done in a number of areas. Some possible areas would include historical precedents and practises in the administration of traditional Aboriginal justice, how a renewed system would interact with the established provincial and federal systems, how long it would take to develop and implement such a system, how much the system would cost and who would pay for it, etc. Data would have to be kept that would reflect any socioeconomic impact on crime in the Aboriginal community, recidivism, or impacts on incarceration levels.

Comments

This resolution marks a step in the direction of self-government/self-determination. Notwithstanding the intent behind this resolution, it follows very general parameters. A more far-reaching and precise resolution should be drafted and brought before the Chiefs' Legislative Assembly and its constituents for their approval. Aboriginal governments in other parts of Canada have already acted on this issue and have initiated several relevant programs both within the Canadian system and parallel to the Canadian system.

3.1.6 Split Lake Indian Band. *Submission to the Aboriginal Justice Inquiry of Manitoba.* Presented at Split Lake Band Hall, Split Lake, Manitoba, by Chief Larry Beardy, March 21, 1989, 11 pages (photocopy).

Literature/Program Profile

In his submission to the Court of Queen's Bench and Provincial Court senior representatives in charge of the Manitoba Aboriginal Justice inquiry, Chief Beardy presented a profile of a semi-isolated northern community "with a crime rate which is close to nonexistent" (p.4) and where RCMP reports indicate "months when not a single offense is reported" (ibid.) in spite of social and economic conditions not unlike those on any other Indian reserve. Chief Beardy highlights what he considers to be the reasons for this and makes several recommendations as to how the administration of justice at Split Lake could be further improved.

Aboriginal Control

Chief Beardy says an elected police force enforces a ban on alcohol and other community approved by-laws and a council of 12 elders, six of whom are chosen by all band elders, maintains a form of court to deal with offenders. Beardy credits this system with keeping Split Lake relatively free of crime (p.5) and with helping the band to achieve the underlying objective "to place the entire Jusitce System (outside of serious crime) within the control of the band, and develop a system of justice consistent with our Cree Heritage" (p.10). The level of Aboriginal control in this community appears almost absolute. He criticizes the "travelling court circuit" and the Canadian justice system for not recognizing the authority of leaders chosen by the community (p.8).

Funding

The elected auxilliary police force and elders council receive no official funding from any provincial or federal departments or programs. Indian Affairs pays salaries for two band constables only. Beardy admits that funds have been diverted from other band programs for honoria. He asserts that federal funds should be made available for salaries, facilities and equipment. No specific figures are presented.

Program Effect on Self-Government

The elected police force, the Church and Elders' Council seem to have a strengthening influence on this band's ability to govern itself. Chief Beardy's recommended strengthening of their existing authority would further enhance this ability.

Program Evaluation

Chief Beardy mentions that funds were received to conduct a survey in preparation for the justice inquiry submission (p.2), but no details regarding its scope or results are provided. Beardy's comments must have been made on the credibility of intimate knowledge of all aspects of life within his home community. He was speaking as one totally familiar with the residents and inner workings of the Split Lake Indian Reserve.

Does the Program Reduce Incarceration Levels?

Beardy recognizes that offenses do occur and that provincial court is held from time to time on the reserve. However, no information with respect to how many band members receive jail terms is included here. It has to be assumed that community-based policing and influcence of the elders has been effective in keeping the incarceration rates of band members to a minimum.

Recommendations

One recommendation is that a locally chosen Justice of the Peace be put in place (p.9) but several others are made. They are:

1. "The Canadian Legal System must recognize the authority of the Split Lake Auxilliary Police, and provide them with equivalent authority under its code of law. Liability must be equivalent to that of a Special Band Constable."

2. "The Department of Indian Affairs provide a regular program budget for the Split Lake Auxilliary Police Force to a maximum of one Auxilliary for each Councilor. Their pay level and benefits should be equitable with respect to that provided for a Special Band Constable."

3. "Split Lake Band be provided funds for Auxilliary equipment, badges, uniforms."

4. "The Split Lake Band be provided funds for a new detention centre under local control."

5. "The Special Band Constables, supported by the Auxilliary, be fully responsible for the day-to-day policing in Split Lake and that RCMP regular tours be discontinued. The RCMP would provide policing and investigation for serious crime in response to a Request for Help from the community. At other times, they should only enter the Reserve on official business (e.g., accompanying court, student education)."

6. "The buildings in the possession of the RCMP be transferred to the Band, as their need no longer exists."

7. "Chief and Council as a group be appointed with full power of magistrate."

Further Research

The Split Lake Band makes no suggestions for further research, but their home-grown justice mechanism opens the door for many researchable questions. Some of these are: How closely does the Split Lake system of maintaining order within the band resemble traditional Cree societal structure? What effect has this model had on reducing crime in the community? To what degree has this model reduced the incarceration levels of band members? What effect would this model have on high Aboriginal incarceration levels if it were more widespread? How should this system be adapted for implementation in all Cree communities? How much would wide-scale implementation of this system cost? How receptive are Canada, the provinces and the Aboriginal community to the concept of adopting this form of justice system?

Comments

Chief Beardy appears willing to maintain his community's unique form of traditional Cree justice under the umbrella of the Canadian justice system in spite of problems with the ***Indian Act*** and the bureaucracy that administers it. His comments and recommendations are made in the context of the right of a free people to manage their own affairs in accordance with their own Aboriginal heritage. This small community of 1300 people has been using what amounts to a traditional form of Aboriginal justice. If what Chief Beardy has said about its impact on crime is true, and research on this matter would either verify or discredit his claims, this form of justice administration has potential to reverse the trend of Aboriginal invovlement in the dominant criminal justice system.

3.1.7 Manitoba Metis Federation (MMF). *Submission To The Aboriginal Justice Inquiry: Research And Analysis Of The Impact Of The Justice System On The Metis.* Barkwell, Lawrence J.; Chartrand, David N.;Gray, David N.; Longclaws, Lyle; Richard, Ron H. MMF Justice Committee. Winnipeg, Manitoba. November, 1989. 125 pages.

Program/Literature Profile

This comprehensive work provides a Metis perspective on a wide range of justice related subjects. Their research indicates that racial discrimination in the form of "inherent subliminal prejudice"(p.50) is evidenced by the experience of Metis people in federal and provincial correctional facilities, incarceration rates of Metis women, Metis child apprehensions, existing sentencing alternatives, policing, legal aid and courtworker programs and judge and jury selection. What emerges from the MMF's examination of these areas is a categorical indictment of the justice system in Manitoba. The MMF's underlying message is that an autonomous Metis justice system would end (p.47) pressure exerted on their community by the criminal justice system. Although the MMF has pointed out severe problems in all aspects of the Manitoba justice system, the authors have not presented a model of their own system or set out the parameters of alternative programs that would impact on the dominant system.

Aboriginal Control

Metis control of the justice system in Manitoba is nil, according to the authors of this submission. However, they sanction their own justice system through a long-term transfer of authority "in all matters of justice, corrections and child and family services" (p.76) as a way of increasing their control. They also suggest that Metis participation in "semi-autonomous justice services delivered and controlled by Aboriginal groups" (p.74) would help right the balance. A short term solution would be "transfer of specific programs to the MMF" through bilateral negotiations with the provincial government (p.77).

Funding

How an autonomous Metis Justice System or semi-autonomous programs would be funded is not addressed. The question of funding is applied to the cost of keeping Metis people incarcerated, the cost of keeping Metis youth in foster homes and to the cost effectiveness of policing Metis communities. If the tables presented in the appendices which indicate the breakdown in the provincial government's expenditures in justice and corrections (pp.101-104) are compared to those indicating high "native" involvement in the criminal justice system (pp.92-113), it can be deduced that these costs are heavy indeed. The authors suggest that existing budgets be transferred to the MMF (p.77).

Program Effect on Self-Government

The negative effect of the Manitoba Justice system and its related programs are the focus of this research. Since no specific justice system or program is in place in 1991 it is difficult to apply this question to the MMF's submission. The MMF is advocating the implementation of its own system and programs which they say will have a positive effect on their self-government. Justice being part of a self-governing nation's makeup is discussed several times throughout this document.

Program Evaluation

The MMF has left few stones unturned in their examination of the effects of the Manitoba justice system on their constituents. The research methods are outlined in Chapter One. Some of them are: review of literature, journals, government statistics; regional consultations with MMF membership; telephone surveys; interviews with government agency officials; use of the Freedom of Information Act from the Province of Manitoba (p.1). The MMF has conducted very thorough research and has compiled an extensive amount of information. The work encompasses assessment of Metis communities, their involvement in all aspects of Justice and Corrections, socio-economic contributors to over-incarceration, etc. The 124 page MMF submission includes a 116 item bibliography and 10 pages of appendices covering items such as the locations of local justice committees, Metis population estimates, languages spoken in Metis communities, etc.

Does the Program Reduce Incarceration Levels?

It is argued that incarceration levels would decrease if a Metis justice system and programs under Metis control were implemented.

Recommendations

Numerous recommendations on every examined subject are interspersed throughout this document. In addition, Chapter 13 is devoted to listing recommendations. Recommendations are categorized under three headings: those respecting Metis self-determination; short term transfer of existing programs to Aboriginal control; and systemic changes to the Manitoba Justice System (pp.65-73). The main recommendations under each heading respectively are: the establishment of alternative, parallel Aboriginal justice systems (p.65); correctional facility expenditure restriction and increased expenditures on Aboriginal community-based programs (p.67); mandatory cross-cultural training for all non-Aboriginal people involved in the justice system (p.69). 62 specific recommendations are outlined in chapter 13.

Further Research

No specific recommendations with respect to further research are apparent in the MMF submission but the amount of data compiled on virtually every aspect of Metis involvement within the Manitoba criminal justice and social welfare systems leaves little room for more research. The only area relatively untouched is that of financing the proposed Metis controlled system and perhaps gaging the attitudes of non-Aboriginal Manitobans toward the concept of parallel Aboriginal justice systems.

Comments

The MMF Justice Committee has presented a compelling argument in favor of an autonomous Metis Justice System covering the family unit, corrections alternatives, policing and the judiciary. The authors have pin-pointed examples of inherent, subliminal discrimination toward their people in every corner of the Manitoba criminal justice system.

3.1.8 Joint Studies of the Government of Canada, the Government of Saskatchewan and the Federation of Saskatchewan Indian Nations. *Reflecting Indian Concerns and Values in the Justice System.* PreFontaine, D.C.; Tyler, K. and Opekokew, Delia, 4 April 1985, 85 pages.

Literature/Program Profile

This report helps provide a context. It does not outline a specific program that is in operation. What it does is brief the reader on a number of joint research projects that were carried out by the three levels of government named in the bibliographic citation. The report's authors carried out research on Saskatchewan Indian customary law, on a community-based mediation proposal called the Peacemakers and on corrections and policing. In addition to this report, the field research resulted in the production of five volumes of literature, two volumes on customary law and a volume on each of the other three headings.

Aborginal Control

The question of Aboriginal control is applied to the four fields of justice explored by the research teams. Their overriding message appears to be aimed at enhancing the current level of Aboriginal control and involvement in the dominant criminal justice system rather than presenting a case for the establishment of a sovereign national Indian judicial and correctional system. Since this research was the joint effort of the federal, provincial and Indian governments it is difficult to determine who controlled the field research. Most of the researchers came from the non-Aboriginal governments. Had the Indian governments wielded more control over all aspects of the project, the results and the depth of the finished product may have been different. There seems to be a position being suggested that a new justice system for Indian people in Saskatchewan should have a high level of input from that group but the new system should fit within the parameters of the established system.

Funding

Not discussed.

Impact on Self-Government

Several recommendations are made that, if carried out, would not only improve Saskatchewan Indian involvement in the administration of justice, but might subsequently precipitate significant gains in the direction of self-government.

Program Evaluation

Four working groups totalling 25 people carried out field research in 15 Saskatchewan Indian communities that researchers say represent a cross-section of the differing cultural groups in this province. Each working group travelled to a number of reserves and conducted interviews with local residents knowledgeable about or involved in traditional forms of maintaining order in the band, with police constables or with other members of the criminal justice system such as courtworkers or justices of the peace. Because of time restraints, the working groups were unable to visit all of the 69 reserves.

Does the Program Reduce Incarceration Levels?

Proposals are recommended in the area of corrections and community-based mediation and sentencing alternatives that could conceivably reduce Saskatchewan's high Aboriginal incarceration levels, or at least transfer control of the Aboriginal offender from provincial hands into the hands of the revamped Aboriginal justice system.

Recommendations

About Customary Law

1. "Indian communities be encouraged in their development of information processes...employing mediation and conciliation rather than adversarial advocacy as a means of resolving disputes and community problems."
2. "Changes...to make the justice system more responsive to Indian concerns and interests."
3. "Further research into specific content of Indian customary law be encouraged" (p.18).

About Justices of the Peace

1. "Interested persons and groups should be consulted prior to development of a program."
2. "Prior implementation on any reserve, the Band Council should pass a resolution of support."
3. "The appointment of justices should be encouraged in areas where Special Constables and Indian Probation Officers are available to develop a local corrections committee."
4. "Qualified resource personnel who would supervise and assist justices should be available prior to implementation."
5. "The Federated Indian College may become involved in the training program."
6. "All RCMP officers coming in contact with the program must be educated to provide support for, as opposed to interference with, the justices."
7. "The issue of...remuneration differential between Indian Justices of the Peace and others...must be discussed."
8. "Further study...regarding the appropriateness of an option to appear before an Indain Justice or a Magistrate."
9. "In choosing a Justice of the Peace...[need to] be aware of issues [around]...justice hold[ing] court on his own reserve."
10. "Central registry of decisions established."
11. "Initial training:
    - court procedures
    - judging processes
    - administration and accounting.
    A manual developed and the viability of instituting an apprenticeship program."
12. "Ongoing training, assistance and supervision."
13. "Justice should begin with a limited jurisdiction" (pp.17-18).

About Peacemakers

1. "The use of peacemakers be encouraged."
2. "The role of peacemaker be expanded to include the various functions...of other mediation programs across Canada."

3. "Additional services be provided which would supplement the role of peacemakers and assist with any interface the community might have with the existing judicial system."
4. "Each community design its own peacemaker program."
5. "A resource person be designated to assist communities as may be necessary..."
6. "Appointment of someone to explore dispute mechanisms for election results on reserves" (pp.33-34).

About Corrections

1. Focus on community development
2. Return certain aspects of justice system to the reserves

   - inform communities about the operation of the justice system
   - provide a human focus for provision of services
   - develop Indigenous community institutions of service based on traditional culture and values (pp.60-64).

3. Give greater emphasis to service delivery on reserves (police, probation, community services)
4. Emphasize training and development of personnel. Have more public education about Indian culture, traditions and lifestyles
5. Improve efficiency by networking systems for coordination and consolidation
6. Involve more Indian people in the justice system
7. Develop a generalist approach to consolidate local alternative programs and services (pp.38-39)

About Law Enforcement

1. Communities should be better informed about their possible input into law inforcement

   - FSIN and RCMP and the province see that communities are better informed
   - workshops print and audit materials produced
   - appoint an Indian person to Saskatchewan Police Commission

2. To prevent unsuitable RCMP personnel assigned to reserves, have special selection criteria and a cross-cultural course
3. Increase number of Special Constables
4. Province of Saskatchewan and the RCMP develop crime prevention programs and the expansion of sub-detachments staffed by Special Constables near to reserves
5. Develop better communication between reserves and RCMP detachments
6. RCMP expand the role, job opportunities and career aspirations of Indian Special Constables

   - a number of specific recommendations addressed these issues

About Legal Advisory Services

1. "It is recommended that consideration be given to establishing a capacity for legal advisory services to be made available to assist further in the development of these recommendations."

Further Research

Further Research is recommended

1. "to build upon the general 'feel for' Indian customary law"
2. "using persons intimately acquainted with particular communities" as well as the Anglo-Canadian legal system (p.15)
3. to find ways to "de-mystify" operation of the criminal and juvenile justice systems to members of Indian reserves (p.39)
4. to study with regard to native police forces (pp.68-69).

Comments

The authors of this report have made numerous recommendations for change in the Saskatchewan justice system. This is commendable. However, none of the recommendations say specifically that Treaty Indians should be assisted in developing their own justice system and jurisdiction on the reserves. There is also a tendency to favour existing programs such as the RCMP's Indian Special Constable program. In 1991 this program is being rendered obsolete by large numbers of Aboriginal people who meet/exceed the requirements for regular constables. It is also interesting that the possibility of an autonomous force operational under the auspices of a tribal council, or band council, appears not to have been addressed.

3.2 Policing

3.2.1 Canada, Indian and Northern Affairs Canada. *National Evaluation Overview of Indian Policing, Executive Summary and Main Report.* Social Policy Associates/Evaluation Group Incorporated. Toronto. July, 1983, 68 pages and appendices.

Literature/Program Profile

Canada's four major Indian Policing Programs (IPP) as they stood prior to 1983 were the focus of this evaluation. These programs are the Dakota-Ojibway Tribal Council Police (DOTC), the Amerindian Police Program (APP), the Ontario Indian Constable Program (OICP) and the Royal Canadian Mounted Police (RCMP) Indian Special Constable Program. The DOTC and APP fit our definition of Aboriginal-controlled programs, so this evaluation is included. The evaluation summarizes IPP strengths and weaknesses in a wide range of subjects: the powers of police constables in the programs, effect of police programs on the communities, impacts on crime, etc. Several major recommendations are made throughout the evaluation.

For the purposes of our literature review, information will be supplied for each IPP under each sub-heading. In effect, four individual reviews are included in this annotation.

Note: The National Evaluation Overview describes in some detail the findings of the research contractors. More specific data is referred to by page number which indicates the existence of another book. PJR did not receive a copy of this other text. No bibliographic reference is made to it in the National Overview.

Aboriginal Control

Control of the IPPs is exercised in varying degrees by Aboriginal people.

DOTC: This program is under the jurisdiction of a police commission made up of 14 members. There is one member from the RCMP, one from Indian Affairs and Northern Development and one from the Manitoba Attorney General. The other members are representatives of the bands participating in the program and they have the majority vote. The evaluators say this program is "nearly fully Indian controlled through the Dakota-Ojibway police commission," (p.3, Appendix D, Part I). Considering the large area and number of reserve communities under their jurisdiction, the DOTC Police has what is probably the most extensive level of Aboriginal control in Canada.

APP: A degree of Aboriginal control exists through the Amerindian Police Council which consists of representatives from the 20 reserves participating in the program (p.2, Appendix C, Part I). The evaluation states that many complaints are heard from the bands about their lack of authority in the program. "Band councils have little or no input into policy and program decision making and are very dissatisfied with their lack of authority and power within the program," (p.3, Appendix C, PartI). The evaluation goes on to say the problem lies with the APP Director, whose management of the program is "perceived to be autocratic and centralized, rejecting consultation or discussion with band councils," (p.3, Appendix C, Part II).

OICP: Chiefs and councils of the participating reserves have some input into the program but the overview reports a consensus from them that band council influence has to be increased substantially. The band councils have the power to make by-laws to be enforced by OICP officers and they have some say in hiring. Some apprehension on the part of the chiefs is reported with respect to their relationship with the Ontario Provincial Police Commissioner (p.3, Appendix B, Part II).

RCMP Indian Special Constables: This program has the lowest level of Aboriginal control. The special constables are completely under the jurisdiction of the RCMP chain of command and the government of Canada.

Funding

Some general figures are provided in various sections of the evaluation but precise audit-style statements are not included. The evaluators have determined that IPPs are less expensive to operated than mainstream police departments. They concluded it costs $49 per capita to operate the IPPs compared to $83 per capita for non-Aboriginal policing (pp.61-62, Overview Study).

RCMP Special Constables: In the 1982-83 fiscal year, the cost of this program was $5,368,188.00. Costs are split approximately 60/40 % between the provincial and federal governments. For example, in 1984, 46% of this was covered by the federal Indian Affairs department and 54% was covered by the province (p.6, Appendix A, Part II).

OICP: Training is paid for by the OPP at a cost of approximately $6,000.00 per recruit. Total cost for 1982-83 was $4,335,068, 52% of which was covered by the federal Indian Affairs department and 48% of which was covered by the Ontario Solicitor General (Appendix B).

APP: In 1982 this program cost $2,477,943.00, 90% of which was covered by the Department of Indian Affairs and Northern Development (pp.3-4, Appendix C, Part II).

DOTC: Costs for this program ($646,000.00) were distributed among the federal Indian Affairs and Solicitor General departments and the Manitoba Attorney General.

Impact on Self-Government

Self-government was not singled out as an issue by the authors of this overview. Though some comments about self-government were included, it appears that no questions respecting self-government and self-determination, and the role policing plays, were ever part of their survey.

RCMP: "There is little involvement of Indians in decision making" (p.7, Appendix A, Part I). All aspects of the program are undertaken by the force's Native Policing Branch in Ottawa and at the divisional and detachment level. Band Councils have no part in the RCMP decision making process.

OICP: Most of the chiefs surveyed said the OICP was satisfactory but they preferred "an independent Indian police force that is band controlled and subject to an Ontario Indian Police Commission" (p.28 Overview). The evaluators wrote that this point of view" is consistent with the growing movement towards Indian self-government" (ibid.).

APP: This program's impact on self-government is difficult to asses. When drafting the evaluation, the authors reported that some participating bands were complaining about their lack of control over the program's "autocratic" Commissioner (p.3, Appendix C, Part II).

DOTC: The evaluators said of this program: "It was expected that the administration of an Indian police Force would bring the reserve communities involved one step closer toward self-government" (PS, Appendix D, Part I).

Program Evaluation

Research on IPPs depended heavily on a survey and on four previous evaluations. These included a 1978 report on the RCMP Indian Special Constable program (Option 3b), a 1981 evaluation of the DOTC program, a 1982 assessment of the APP, and a 1982 report on the OICP. On the survey section of the evaluation there were hundreds of interviews conducted with Indian police officers, band chiefs and councillors, federal and provincial justice officials and other program staff on some 125 reserves participating in the four programs (see pp.11-12, Overview). Survey respondents were asked about the inner workings of their programs, participant satisfaction and program impact. Section 2 of the Evaluation Overview is devoted to details of the research methodology used.

Does The Program Reduce Incarceration Levels?

The evaluation was structured in such a way that incarceration levels were only touched on briefly. Most of the evaluation was done on the IPP impact on crime in the communities being served. The evaluation was done at a time when it was too early to assess any impact because of the lack of data and undeveloped record keeping methods. It would be worth exploring whether a significant reduction in crime in a community would lead to a subsequent reduction in incarceration levels.

RCMP Indian Special Constables: The term "no data" appears in virtually all categories dealing with the impact on crime. No mention is made of any intent of this program to lead to decarceration of Aboriginal people.

OICP: The majority of band councils and reserve Special Constables stated there was "less crime and fewer charges" (p.23, Appendix B Part II). It was not revealed whether this reduction in charges resulted in decarceration.

APP: The evaluators indicated the records on page 119 (of the main research document) show "a slight increase in the numbers of charges, arrests and indictments yet fewer imprisonments."

DOTC: One of this program's objectives as stated by the evaluators was to "reduce the number of prison terms received by Indians" (PS, Appendix D, Part II). There is also a citation on page 6 of appendix D, Part I that says "records show a one-third decrease in the numbers of band members charged during the evaluation period."

Recommendations

Several major recommendations are made by the authors at the end of each section of the evaluation. However, the main recommendation that encompasses all of the IPPs is that they should be continued and expanded. Other recommendations are made for improvements in training, in career potential, clarification in the roles played by political bodies such as police commissions and band councils, improved documentation and record keeping methods and development of crime prevention alternatives. The development of an autonomous/parallel Aboriginal justice system with a strong policing component as an institution of self-government, was not recommended.

Further Research

The authors raised more than a dozen points with respect to future evaluations of the IPPs. Some of them are: a more complete contextual framework that takes into account the "broader characteristics" of the IPPs (p.6, Executive Summary Introduction), more comprehensive design of evaluation procedures, closer co-operation with Indian organizations, a stronger community survey component, more regard to budgetary implications, dealing with the needs of isolated communities, maximizing the role of band councils in the delivery of police services. Although it was mentioned at several points by the authors that the IPPs were reducing crime, they at no time suggested further research into whether or not this reduction in crime had any impact on the incarceration levels of Aboriginal people.

Comments

This work is dated but considering what was found to be available, it is a fairly comprehensive and noteworthy evaluation. There would clearly be much to learn by expanding this form of research using more participatory methods.

3.2.2 *Amerindian Police Service.* Copyright: Claude H. Philippe. Revised in February 1987, 24 pages.

Literature/Program Profile

Claude Philippe's material is not a formal evaluation of the Amerindian Police Service (APS) to be used by government funding agencies for justifying on-going support. It is a marketing tool apparently aimed more at the general public who may be inclined to make general inquiries about the inner workings of this particular police force. With the help of graphs and charts it briefly presents information with respect to the history and development of the force, its jurisdictional limits, its relations with band councils and other police forces. It is a visually attractive information package. The focus of this promotional document can be summed up with this quote: the Amerindian police service is "one of the most important police forces in Quebec and, by far, the most important native police force throughout Canada" (p.14).

Aboriginal Control

Claims are made such as "the band council is recognized as a distinct responsible government towards its electors" (p3) and that its organizational components such as the Amerindian Police Council and Board of Directors are composed of representatives from each participating band and other "elected representatives" (p.13). But, it is not mentioned who the participating bands are or who the other elected representatives are. One distinction that is relevant to the matter of Aboriginal control is that the Amerindian Service is a recognized non-profit corporation (p.11) formed in accordance with the federal Department of Indian Affairs and Northern Development's (DIAND) option 3(a), provincial policing with a seperate Indian police force. This would seem to refute Phillipe's claim that band councils are responsible to its electors because the Indian Act places final approval of all band decisions in the hands of the Minister of Indian Affairs and Northern Development. It is questionable if control of the APS is in the hands of the band councils or with the federal DIAND Minister.

Program Funding

Some funding details that cover a five-year period from 1980 to 1985 are provided in graphs on pages 18, 19 and 20. For instance, in 1985 cost per constable was approximately $37,000, compared to just under $21,000 per constable in 1980 (p.20). Audit information is not provided, nor is there any indication of funding sources.

Impact on Self-Government

The author claims the APS "is the affirmation of a form of self-government" (p.24). Although the author provides little evidence to support this claim, it is partially true in the sense that a policing agency that operates autonomously from the established provincial hierarchy, as opposed to an option 3(b) force, would have a higher level of Aboriginal control. The structure of the board of directors and the police council would also increase the impact on self-government, assuming these bodies have a majority of Aboriginal members. The real impact on self-government would come from the somewhat limited authority of the member band councils.

Program Evaluation

Sources for some of the information used are not cited. The information included is at best general.

Does the Program Reduce Incarceration Levels?

There is no data provided to indicate the Amerindian Program's influence on incarceration levels. This document is not really designed to answer this question and judging from Philippe's commentary, the force was organized with the intention of maintaining order on the member reserves, not necessarily to reduce incarceration levels. However, had the Amerindian Program been able to reduce crime on its member reserves, the incarceration level would have dropped.

Recommendations

Phillipe or other representatives of the Amerindian Police Service do not make any recommendations through this production. The author is, however, implying that Amerindian is a good police force capable of policing Indian reserves and capable of providing training expertise for other band council forces.

Further Research

Areas for further research are not pointed out in this document. This police service's impact on crime levels, and any subsequent reductions in incarceration that may have resulted from a lower crime rate, should be explored.

Comments

This document was sent to us by Maurice Tasse, the Director General of the Amerindian Police in July, 1991. Other more thoroughly researched works probably exist. Other evaluations conducted by government agencies may address some of our questions more specifically.

3.2.3 Canada, Solicitor General Canada. *Native Policing in Canada: A Review of Current Issues.* Robert Depew, Secretariat Research Division, Ministry of the Solicitor General of Canada. January 1986, 169 pages.

Literature/Program Profile

This is a very extensive and critical inspection of the whole issue of native policing programs in Canada. Depew takes a hard look at how police agencies are involved in the overrepresentation of Aboriginal people in the dominant criminal justice system. He identifies key issues affecting each program and assesses the program's impact on crime in their communities. He makes a strong argument that major changes have to occur and makes recommendations as to what these changes are. There is recognition on Depew's part that a direction towards indigenization of policing for Canada's Aboriginal communities is a good path to follow but at the same time he acknowledges the limitations of this (p.27). For instance, while more and more police officers are of Aboriginal origin, the policing methods being used "are all pre-defined in terms of dominant Western-urban models of policing" (p.71) which has caused a variety of problems. Depew also raises the issue of an autonomous Aboriginal criminal justice system. He writes, "Integrate to native adaptation is the general development of native justice systems and, in particular, the reinstatement, reinterpretation and development of tribal or customary law....Supported by native religious values and more socially, politically and economically stable community structure, they have the potential to create opportunities for a new kind of articulation insofar as they indicate directions for legitimate change" (p.104). His emphasis is that "critically distinct native approaches to policing must be developed" (p.x).

Aboriginal Control

With respect to existing police porgrams, Depew states that "Native Control" does not mean autonomous police forces but rather that a seperation exists between those indigenized forces policing Aboriginal communities and those forces who are federal, provincial or municipal in scope (p.55). Under the "Native Control" category he includes Amerindian Police Program, Dakota-Ojibway Tribal Council Police, Band Constable Police Program, Kahnawake Mohawk Peace-Keepers, Blood Tribal Police Program, Louis Bull Police Program and Saddle Lake Tribal Police. These police programs are accountable to their communities through the band council or through a group of band councils. Under "Non-native Controlled Police Programs" are: RCMP Native Special Constable Program, Ontario Indian Special Constable Program, Cree and Inuit Policing Program and Municipal Policing of Reserves Adjacent to Municipalities. Aboriginal people enjoy very little or no control over these programs.

Program Funding

Funding of Aboriginal policing programs is not a major aspect of Depew's undertaking in terms of precise dollar figures or extensive cost analysis but the funding issue is mentioned from time to time. For example, cost per constable for each program (p.63) or percentage of total program budgets shared by federal and provincial governments (p.70) are touched on. Depew views funding as more of an economic issue (p.112), predicting that levels will be pushed higher if current Aboriginal socio-economic conditions persist. Shifting fiscal responsibility to the "native client" at some time in the near future is suggested (pp.114, 155).

Impact on Self-Government

Depew recognizes that the Aboriginal community is becoming more adamant in expressing self-government as their main political aspiration. He questions whether the current Canadian criminal justice system of which policing forms a front line component has had a positive effect on Aboriginal self-government/determination. He points out problems with the 1986 relationship between mainstream policing agencies and Aboriginal people and suggests a major overhaul of the system is in order. By suggesting changes such as community-based policing, Depew is recognizing that existing policing programs beyond control of the Aboriginal community have had a detrimental impact on self-government. Furthermore, he appears to be advocating that indigenized, culturally appropriate and community-based policing would bring the Aboriginal community closer to their goal of self-government.

Program Evaluation

Depew's approach to Aboriginal policing issues is not one based on surveys or questionnaires involving large numbers of personnel. He takes a broad look at a number of issues such as incarceration levels, alcoholism, Aboriginal and non-Aboriginal controlled policing programs, policing programs in other countries, non-Aboriginal police perceptions of Aboriginal people, economic and social issues that affect policing, traditional Aboriginal policing methods, political contexts and community-based policing as a viable alternative. He cites 123 sources in his bibliography. He provides miniature evaluations of each program including those from the USA, Australia and New Zealand, but his main focus is evaluating the entire issue of Aboriginal policing in Canada.

Does the Program Reduce Aboriginal Incarceration Levels?

It is very difficult to apply this question to Depew's review because it was not his intent to study levels of incarceration. However, he cites 1985 figues provided by Canadian Centre for Justice Statistics (p.9) which indicate high Aboriginal incarceration levels and adds that one of the primary objectives of federal policing policy was "the reduction of native involvement in the criminal justice system" (p.33). If this question was applied strictly to Depew's work, the only answer to be deduced by reading between the lines is that the programs as constituted and controlled have not reduced incarceration levels.

Recommendations

What distinguishes Depew's study from others is that it not only critiques the existing structure of Aboriginal policing in Canada for a lack of Aboriginal control, it recommends alternatives. It is Depew's view that community-based policing is an alternative that could conceivably satisfy the need for a more culturally relevant policing model (p.x) and the need for more political control by the Aboriginal community that would enhance the movement twoard self-government (p.143). He says community-based policing is a strategy that uniquely serves the interests of particular native communities while at the same time remaining consistent with federal and provincial policy (p.143). Depew recommends that policy-makers and program developers "respond to native policing problems and issues with the right type of policing arrangements for their communities" (p.24) that take into account program effectiveness; efficiency; economy; cultural, political and legal consistency; and fairness. Recommendations that cover a number of issues, including further research, are interspersed at several intervals through the document.

Further Research

Depew devotes most of his last chapter to suggesting further research. Areas he suggests are: the extent and consequences of unreported crime; actual and potential self-policing models; local preference for alternatives to external police intervention; the shortage of informative case studies dealing with policing off-reserve Indians, Metis, Non-status Indians for whom few special programs exists, and for the Inuit community (p.151); the place of native women in all aspects of native policing (p.151); steering away from "key informants" and utilizing a wider range of survey participants (p.152) and differences between native and non-native approaches to community level justice administration (p.153). He also suggests research be conducted into the attitudes held by non-Aborginal police officers toward Aboriginal people and their communities.

Comments

If there is a shortcoming in Depew's research, it is that Aboriginal people themselves are not directly involved even though it is their lives most adversely impacted by the system. Perhaps their views and their work in this field should have been considered more than they were. The majority of this research was based on studies conducted by non-Aboriginals.

This work was published in 1986 at a time when constitutional discussions on Aboriginal rights and self-government were being held. The profile of Aboriginal self-government was raised dramatically and is still growing in 1991. Depew's critical assessment of Aboriginal policing and his recommendations for sweeping change is timely. He sounds a warning that changes will have to be made soon because the policing status-quo for Aboriginal people is not a good one. Depew writes, "'hostile dependence' of natives on external police agencies perpetuates police ineffectiveness and inefficiency and political discontent and protest among natives" (p.xvi). In 1990 discontent and protest among natives escalated into militancy and civil disobedience on a nationwide scale. In the area of Aboriginal justice, the federal government was receiving strong recommendations for change from researchers such as Depew and from full-scale public inquiries into this issue. But, in light of the violent confrontation at Oka, Quebec in 1990 and some views recently expressed by high-ranking Canadian Justice officials that Aboriginal people remain ultimately under jurisdiction of the present system, it would appear that such warnings are still being unheeded.

3.2.4 Griffiths, Curt Taylor and Yerbury, J. Colin. "Natives and Criminal Justice Policy: The Case of Native Policing" in *Canadian Journal of Criminology* 26:2 (April 1984):147-160.

Literature/Program Profile

The paper outlines the conditions which helped to bring into being the Native Special Constable Program of the RCMP (Option 3b) and the problems which the program and the Special Constables have experienced. The author credits the problems to a lack of foresight by the federal government in underestimating the diversity of the policing needs of Aboriginal people and their traditional strengths (pp.154-156). As well, he sees the failure of the RCMP who were eventually charged with the responsibility of recruiting, training and using the Special Constables. The RCMP undermined the value of the Constables by refusing to give them either sufficient training, sufficient status or allowing sufficient native input into the program (pp.152-153). There appears to have been a lack of understanding towards the people they were serving.

Aboriginal Control

No Aboriginal control was present in the program. In fact the authors quote the Native Counselling Services of Alberta, "The importance of the recommendations [of the Canadian Corrections Association report, ***Indians and the Law***]...was that thinking on the reserves was directed away from the concept of autonomous Indian policing and toward policing under the RCMP" (p.149).

Program Effect on Self-Government

The program appears to have had a negative effect. The Special Constables were placed in an untenable position of not being understood by either the people on the reserves or by the police force for whom they worked, thus adding to the level of stress in the Indian communities (pp.151-153). The Task Force on Policing on Reserves (Ottawa: Indian and Northern Affairs, 1973) stated that under Option 3b, native band councils would have less direct input into native policing than had existed under band constable policing arrangements. This appears to have been the case (p.153).

Program Evaluation

Several relevant studies are mentioned:

1. Bryant, Hawkes and Machan conducted an evaluation for the Department of Indian and Northern Affairs in 1978 ("Evaluation of the RCMP Indian Special Constable Program" (Option 3b). Ottawa: Indian and Northern Affairs, 1978).

2. Native Counselling Services of Alberta also conducted an inquiry ("Policing on Reserves: A Review of Current Program and Alternatives." Edmonton: NCSA, 1980).

3. VanDyke and Jamont. "Through Indian Eyes: Perspectives of Indian Special Constables on the 3b Program in "F" Division." Regina: RCMP, 1980.

Does the Program Reduce Incarceration Levels?

It did not appear to reduce incarceration.

Recommendations

The author cautioned that the difficulties afflicting the Native Special Constable Program are not easily remedied. "Without careful attention to the problems of the Special Constable Program, through open dialogue between government and native bands, further policy initiatives may only serve to compound rather than remedy the difficulties" (p.157).

Comments

It is interesting to note that by 1989 in Alberta more than half the policing was done by band constables, although in Saskatchewan there was only one band constable. However, the police to population ratio was 1:307 in Alberta but only 1:765 in Saskatchewan. The level of RCMP Special Constables was almost the same in each province: 1:735 in Alberta and 1:781 in Saskatchewan (Canada: Indian and Northern Affairs. Indian Policing Policy Review: Task Force Report: January 1990:52-3).

3.2.5 Canada, Indian and Northern Affairs. *Indian Policing Policy Review: Task Force Report: January 1990.* Ottawa: Indian and Northern Affairs Canada, 1990, 54 pages, including 29 pages of tabulated information. English bound copy.

Literature/Program Profile

This is the first comprehensive review of the Indian policing policy area in nearly 20 years (p.2). The task force report deals with the broad issues related to policing in Indian communities. A number of issues are identified and recommendations made about further negotiations between the federal, provincial and band levels of government. It also provides many details about funding costs, description of current policing programs, areas of responsibility, jurisdiction, authority, training of officers, population/crime rates per province and police ratios. Much of this information is in tabular form and is easily located in the text.

Aboriginal Control

An historical overview shows that the level of Indian involvement has increased marginally over the last 25 years and has been achieved very unevently across the country (pp.24-25). Programs under some level of Indian control exist in Manitoba, Alberta and Quebec. As well, special band constable programs are in place in some bands across the country (pp.26-41). For the most part, however, either provincial or RCMP are totally responsible for policing in the majority of reserves.

Funding

Program funding is shown to vary widely in areas where some local control is taken. The Dakota-Ojibway Tribal Council Police is funded 85% federally and 15% provincially. In Alberta the Blood Tribal Police receive 35% federal funding and 65% band funding. The Hobbema, Enoch, Stoney and Saddle Lake group receive only 8% federal and 92% band funding and the Louis Bull Police receive 2% provinical and 98% band monies.

In Quebec, the band forces are paid 100% from federal sources except for the Cree/Inuit Police which receive 100% provincial funding. Band constables under a plan (Circular 55) initialed in 1965 and used by a number of bands across the country receive 100% funding from federal sources. Non-Indian controlled special constables also are not uniformly funded, with federal funding varying from 90% to municipalities adjacent to reserves to 36% for special constables under contract to reserves. The balance in each case is picked up by the provincial government (Table 3, p.44).

Program Effect on Self-Government

The report states its concern for the principle of self-government and recognizes that control of policing can be a step toward that end (pp.16-17).

Program Evaluation

The report refers to a number of evaluations of Indian-specific police programs, and the recommendations are summarized (pp.8-9).

Does the Program Reduce Incarceration Levels?

Concern is raised about the high levels of incarceration, but no concrete suggestions address that issue other than to suggest more and better policing and that economic conditions are a contributing factor (p.3). Substance abuse is not mentioned in this context.

Recommendations

Eight principles and 6 conclusions are summarized (pp.22-23) in the Task Force Report. They stress the need for tripartite consultations among federal, provincial and Indian organizations to negotiate clearer federal policy in the areas of jurisdiction, progress toward self-government and funding.

Further Research

No immediate further research is mentioned in this report.

Comments

The report appears to be thorough and to have used input from Indian bands as well as other sources, but one has the impression that the conclusions are reached by a non-Aboriginal bureaucracy which is trying to be balanced but still sees the problem from a paternalistic stance. The report appears to endorse the notion that the only way to reduce crime on reserves is to increase the policing level. It does not address the correlation between substance abuse and public offences or the poor economic conditions and lack of self-determination on reserves, contributing to the alienation of the youth as factors in crime. Even in a report on policing one might expect these contributing factors to be given a higher profile than this has done.

3.2.6 Trudeau, Robert. *A Proposal to Establish an Indian Police Cmmission and an Indian Police Force in Alberta.* Draft Copy. Indian Association of Alberta, March 1979, 18 pages (photocopy).

Literature/Program Profile

The paper envisions an Indian Police Force for Alberta based to some extent on the Dakota-Ojibway Police Commission in Manitoba. It would have the power to enforce Tribal by-laws, provincial statutes and the *Criminal Code*. The paper outlines the composition of the Commission and its duties which would be to provide adequate policing to the Indian reserves while concentrating on crime prevention. Staff roles for Police Chiefs, each researcher, Administrator, RCMP Advisor, Community Relations Officer and Constables are sketched. Training, police jurisdiction on and off reserves, evaluation and recruitment are dealt with.

Aboriginal Control

The Commission would have the authority to hire, train, staff and control the quality of policing within its jurisdiction. The local Police Chiefs and their forces would be responsible to their respective reserve councils for scope of their work and for following the local by-laws. It is suggested that all staff be native and able to speak one Indian language as well as English.

Funding

Funding was not spelled out other than that it should be flexible and provide resources for the jobs to be handled and able to pay staff at levels comparable to other forces. Federal and provincial funding is mentioned.

Program Effect on Self-Government

Because each reserve could opt in or out of the program on a 5-year basis and because the local Police Chief would be responsible to the local band council, considerable responsibility would be given to the local government and could conceivably have acted as a precedent for other aspects of self-government.

Program Evaluation

Evaluation of the Police Chiefs and the Police Force was included in the paper, as were other factors such as:

- performance evaluation of staff members
- statistical analysis of crime rates
- effectiveness of rehabilitation programs
- effectiveness of community relation programs
- measurement of cost compared to welfare, incarceration, parole
- off reserve attitude to the Force
- federal-provincial attitude toward Force
- the commission's performance

Does the Program Reduce Incarceration Levels?

The program envisioned reducing crime rates and incarceration through promotion within the Indian community of greater respect and empathy with the Indian Police Force which would in turn be expected to concentrate on prevention, community relations, alternatives to incarceration and rehabilitation.

Recommendations

The paper was written as a follow-up to a resolution from the All Chiefs' Conference of Alberta in 1978 in which "the Federal and Provincial governments" were asked to provide "funds necessary to conduct this study regarding Indian policing and training to ensure that the Indian Police program can be successfully carried out for the benefit of the Indian people."

The paper clearly implied that the Chiefs' request to the federal and provincial governments was for the right to have this model which was somewhat similar to an existing one in Manitoba (Dakota-Ojibway Police Commission).

Further Research

None is suggested in the report.

Comments

It would be interesting to find out how far these recommendations were taken. By 1990 it appears that only three separate regional policing entitites were in place in Alberta ("Indian Policing Policy Review Task Force Report, January 1990, Ottawa, Indian and Northern Affairs"). These have less authority than the Indian Police Commisison envisioned. Was this idea of a province-wide Commission abandoned by the Chiefs of Alberta or rejected by Indian Affairs or the Department of Justice?

3.2.7 Harding, Jim. "Policing and Aboriginal Justice." A paper presented at the Workshop on Future of Policing in Canada, University of Manitoba, March 23-24, 1991, 16 pages. (To be published in *Canadian Journal of Criminology*, July-Oct., 1991).

Literature/Program Profile

The author deals with the topic under seven main headings.

1. **Overcoming Denial**: in which he discusses the gradual realization by some police forces that racism (systemic discrimination) exists within.
2. **Why Focus on Police**: in which the author outlines the crucial place of the police as the "front-end" of the criminal justice system for Aboriginal people.
3. **Reforms as Tech-fix**: touches on two attempted police solutions:
    a) the cross-culturalism training which has been cursory and biased
    b) native special constables with less training, status and pay than regular police but were to make law enforcement more efficient amongst Indian people
4. **Tribal Policing**: which has gained momentum especially in Alberta, Manitoba, Ontario and Quebec.
5. **Urban Policing**: in which he discusses the movement of Indians to cities and the effect of policing, employment, family breakdown and racism on displaced individuals with the possibility of "Indian-controlled programs and services in the cities...now on the political agenda" (p.11).
6. **The Police Response**: in which he discusses the heightened awareness of the need for reform in the RCMP and the increased numbers of Aboriginal police in the regular force, but the failure of this to address fundamental economic and political problems contributing to over-incarceration of Aboriginal people.
7. **Toward Legal Pluralism**: in which the potential in ***Charter of Rights*** rulings and the possibilities of parallel justice systems for Aboriginal people are discussed (p.16).

Aboriginal Control

The author favours models which give Aboriginal people the greatest scope for self-determination.

Program Funding

Funding is not discussed.

Program Effect on Self-Government

Program effect on self-government is not spelled out, but the possibility of a beneficial effect is implied in the discussion of legal pluralism and parallel justice.

Program Evaluation

This is not specifically charted, although it is argued the cross-cultural training and special constable programs have not significantly reduced incarceration nor greatly enhanced policing in Aboriginal communities.

Does the Program Reduce Incarceration Levels?

The move to local control is seen as one way to broaden the "network of community accountability" for social problems and to lessen the alienation that makes socially unacceptable behaviour more frequent. It also makes possible the mediation techniques which reduce the incarceration option in enforcing acceptable behaviour.

Recommendations

In view of the present "political opening to begin...change...encouraging the creating of processes and resources for Aboriginal justice is in the funadmental interest of Canadians...and those who work within the criminal justice system...We can only hope that more policing officials will provide positive leadership on this in the coming years" (p.16).

Further Research

Not discussed.

Comments

This paper is a review of the recent climate in the justice system, especially policing and a look at possible solutions which are being tried and may improve the outlook both for Aboriginal people and the police forces which confront them in our society.

3.3 Courts

3.3.1 Canada, Government of Saskatchewan. *The Native Courtworker Services Of Saskatchewan (NCSS) Program Evaluation.* Owen Consulting Group. March 1983.

Literature/Program Profile

The NCSS program started in 1969 through the Prince Albert Indian and Metis Friendship Centre. It was funded jointly by the Federal and Saskatchewan Justice Departments as a pilot project in 1972 and expanded into a program run through 11 Friendship centres across the province (p.8). A chronology of the program's development is provided (p.8a). In 1980, financial and administrative responsibility for the program was taken up by the Saskatchewan Association of Friendship Centres (SAFC). Courtworkers were paralegals who provided a number of services for Aboriginal people in trouble with the law. They would act as interpreters in areas where language barriers existed, they would appear in court for clients or speak on their behalf, inform clients as to their rights or familiarize them as much as possible with court procedures. They were not lawyers but would refer clients to lawyers. In short, courtworkers were a friendly face for clients facing what was often perceived as a hostile judicial environment. The courtworker program was set up to address the issue of Aboriginal over-representation in Saskatchewan's criminal justice system. In spite of a clean bill of health provided by consultants hired by the provincial government, the program was terminated shortly after their report was issued.

Aboriginal Control

NCSS was not directly under the umbrella of the Federation of Saskatchewan Indians (FSI) or the Association of Metis and Non-status Indians of Saskatchewan (AMNSIS) existing at the time. The program was the overall responsibility of the Chief Executive Director of the SAFC who in turn was responsible to this group's own board of directors. In addition to this, individual courtworkers were hired and fired by the individual Friendship Centres participating in the program. Each centre had its own board of directors. The Friendship Centre program was federally funded and the NCSS was operating within the framework of the Saskatchewan criminal justice system. NCSS was not part of an autonomous Aboriginal judiciary. There is also the question of the program's relationship with AMNSIS local councils and band councils. There were no apparent formal links with these groups. If there was any amount of grass roots Aboriginal control it would have been through the SAFC and individual centre boards of director's election procedures. However, no details are provided in this evaluation with respect to board size, total ballots cast, voter or board member eligibility, frequency of elections or other political considerations.

Funding

There are no details on the program's funding. It was indicated, however, that the federal and provincial governments equally shared the costs of the program, that the program's financial administration was centralized in 1980, that the books were "well organized" (p.35) and had been audited by a national accounting firm (ibid.). According to the Owen Consulting Group, the Saskatchewan government found a "satisfactory level of accountability for funds provided to the NCSS" (ibid.).

Impact On Self-Government

This is very difficult to assess as the program was never in the hands of the FSI or AMNSIS. However, the links to the Friendship Centres clearly would provide some local Aboriginal control.

Program Evaluation

This evaluation was commissioned by the Government of Saskatchewan and carried out by a private consulting firm over a four-month period from December 1982 to March 1983. The consultants surveyed courtworkers, clients and people from the communities using a questionnaire (p.i). The survey attempted to seek community perceptions of the courtworker program's success in terms of reducing incarceration rates and how well the workers performed before, during and after court procedures. Several appendices are attached that provide the precise nature of the questions asked and responses to these questions. The research methodology is outlined on page 38. The authors rely heavily on "Admissions To Saskatchewan Provincial Correctional Centres: Projections To 1993," published by John Hylton of Prairie Justice Research in 1980. They point to the Hylton Report's projection on page 49 of an increase in Aboriginal incarceration rates and to NCSS's perceived drop in these rates as evidence of the program's success (pp.xiv, 38, 49). The evaluators also determined that more than half of the clients who responded to a question regarding what would happen if the program was ended said "they would have received a heavier sentence or fine, or would have gone to jail" (p.). There was a consensus from respondents that more Aboriginal people would be incarcerated if the program was terminated.

Does The Program Reduce Incarceration Levels?

The evaluation says the efforts of the courtworkers led to a reduction in incarceration levels and should continue to be supported. It is stated that the efforts of the NCSS has led to a 12 per cent reduction in the incarceration rate of Aboriginal people. They arrive at this figure by citing a six per cent reduction reflected in provincial statistics and adding it to a six per cent increase projected in the Hylton Report (p.49). They combined these figures and combined them with the survey responses to justify their conclusion.

Recommendations

An extensive list of recommendations in four categories is provided. The categories are: needs analysis; organizational issues; role of the courtworkers; program and administration issues (p.48). The main recommendation under needs analysis is that the provincial justice department continue to provide financial and other support for the program and thus ensure its continuance. The major organizational recommendation is that control of the program be centralized in order to end a "dichotomy between the regional coordinators and the friendship centre directors" (p.29). In other words, they want to streamline the program's administrative structure. The role of the court worker also needed more definition because, as the evaluators say, the workers began to "mirror" the role of the lawyers (p.55). Improved office facilities, better vehicle use options and improved filing and record keeping were also recommended.

Further Research

One or all of the Aboriginal governments in this province might consider commissioning a study to determine the impact of the demise of the NCSS. A question they could consider is whether Aboriginal incarceration levels increased since the program ended, and if they did increase, to what extent.

Comments

The program was cancelled by the Saskatchewan provincial government in 1987. This program showed the potential of increasing control of justice programs by Aboriginal people, with implications for self-government, within the present system. It is unfortunate the program was not continued and enhanced. Since the NCSS's termination by the provincial government, former workers have claimed that Aboriginal incarceration levels have increased dramatically. If this is true, and considering the claimed decrease in these levels while the program was in full swing, it stands as an example of what an organized attempt to deal with the problem is capable of accomplishing. The NCSS was able to make a significant contribution in spite of a low level of Aboriginal control and low impact on self-government. Following this logic, if a similar program were part of a parallel Aboriginal justice system it could likely reduce these levels. In 1990 the level of incarceration of Aboriginal people in Saskatchewan was 66 per cent for men, 70 per cent for young offenders and 85 per cent for women.

3.3.2 Canada, Consultation Centre, Solicitor General of Canada. *Neyunan Review (Native Counselling Services of Alberta's Native Youth Project).* Kupfer, George, Ph.D.; Kupfer, Lorraine, M.S.W. Ottawa: Consultation Centre, Ministry of the Solicitor General Canada, November 30, 1983.

Literature/Program Profile

The Native Counselling Service of Alberta (NCSA) is a para-legal organization that provides a range of support services for Aboriginal people involved with the criminal justice system. NCSA began operating in 1970. Their Neyunan project began in Edmonton in May of 1980. The project was aimed at native youth already before the courts and youth deemed to be "at risk." The program was recreation oriented. Some activities included movie and pizza nights, swimming, rollerskating, sports events, horse riding, etc. (p.26). There was also a cultural and spiritual component provided through summer camps held on the Blood Reserve under supervision of an elder. One of the Neyunan workers commented that the camp gave urban native youth "a chance to get back their roots, to experience the sweats and the storytelling and being in touch with the earth. For most of them it's a first" (p.29). The Neyunan Project was discontinued at the end of November 1983 due to internal and subsequent funding problems.

Aboriginal Control

The question of Aboriginal control was not addressed by the reviewers. The review was conducted more along the lines of doing something immediate for Aboriginal youth involved in the criminal justice system. The program was implemented in the early 1980s at a time when the concept of self-government was just being elevated to the constitutional level through the First Ministers Conferences. There is no indication about the political structure of the NCSA that indicates the degree of Aboriginal control, or the lack of such control. There is no indication that any Indian bands or Metis locals are part of its board structure, or that individual Aboriginal people directed the development and operation of NCSA projects.

Funding

According to the authors, short term funding was secured for the Neyunan Project mainly from the federal "Manpower" and Solicitor General departments (p.24). The Alberta Native Affairs Department also provided short term funding for the summer camp portion of the program (p.25). No comprehensive figures are provided in the review. However, the authors recorded a litany of complaints from project workers about funding problems that appear to have plagued the project from its inception. It is noted that the project has an "unstable funding history" and that it receives funding "on a sporadic basis" (p.20). This has translated into low wages for project employees which has led to "underlying tension and frustration" that is eventually felt by the youth involved in the project (ibid.). They add that several longer term funding proposals have been turned down (p.24). In short, the project insiders saw the question of funding as a major difficulty and that no government agency viewed the project as their long term responsibility (p.44). There was some speculation on the part of the project employees that funding problems were partially aggravated by the new Young Offenders Act which they say clouded the definition of their project's mandate to provide a sentencing alternative (p.24).

Impact on Self-government

The project's applicability to self-government and self-determination was not raised by the authors. The project's impact was probably minimal, especially when the short period of time in which it operated is taken into consideration. Neyunan's potential for forming part of an Aboriginal justice alternative is, however, probably noteworthy.

Program Evaluation

The Neyunan Project was evaluated by consultants from outside of the NCSA. Research was conducted by reviewing NCSA files and documents relating to the youth project and by personal interviews and meetings with NCSA management and staff. Employees and clients of the Neyunan Project itself were also involved in the survey. Approximately 30 people were involved in the evaluation process. Some statistical tables are included in this report (pp.10-14) that indicate the nature and numbers of participants, what their main concerns were and what types of activities they engaged in. The evaluators say these statistics indicate that NCSA "was able to provide considerable programming for a large number of native children at a very modest cost" (p.14). It was also concluded that Neyunan staff was committed and dedicated and were positive role models.

Does The Program Reduce Incarceration Levels?

There was no evidence provided that indicated a drop in native youth incarceration levels. What was included in this report were general comments that this program was accomplishing that objective. Youth Court judges were "largely unaware" of the program. They, however, recognized that 30 to 50 percent of their caseloads were comprised of native youth and they indicated a willingness to use the Neyunan Project as a sentencing alternative and acknowledged that NCSA had a continuing role to play (p.21). Some of the most insightful remarks were made by the youth participating in the program. There seemed to be a general consensus among them that the program was keeping them out of trouble.

Recommendations

One of the strenghts of the review is that it took a hard look at Neyunan's internal weaknesses. The following is a brief summary of some of those recommendations:

- lines of communication should be streamlined, more meetings are necessary to clarify functions of the NCSA courtworkers, who are often seen as "too passive" in court, and of probation officers (p.19)
- Neyunan began with high hopes and positive results (p.22) but seems to be going downhill. It needs to firm up its program, rebuild trust with justice institutions, do more intense consultation and joint planning and conduct a more systematic program (p.22)
- something has to be done about the high staff turnover rate, poor staff training and excessive diversity of program activities
- more support services, more recreation and youth oriented programming are needed for native youth (p.35)
- need for a house
- better transportation
- more centrally located activities such as in downtown schools
- workshops on how to apply for drivers' licenses, birth certificates, SINs, etc.
- need for more wilderness experience

- more pressure on governments to help expand into crime prevention
- cross-cultural training for all members of the system, including judges
- more involvement from adult native people
- direct liaison with provincial Solicitor-General, Attorney General, Social Services and other departments
- it was the personal view of the consultants who prepared this report that Neyunan should become an extension of the court program and that more contact should be made with judges, court workers and user agencies (p.45)

Further Research

The authors acknowledged more research was necessary on the program's impact on reducing the involvement of Aboriginal youth in the criminal justice system. However, they did not include any suggestions as to how such research could be conducted.

Comments

The Neyunan Project sounds like a very worthwhile attempt to prevent and reduce the likelihood of an urban, Aboriginal young person being forced by circumstances beyond their control into the criminal justice system. However, taking street kids to professional sporting events may have the adverse effect of teaching them to expect free tickets for everything courtesy of the program or the government. However, making such opportunities available might encourage more participation in sports and uplift the yourh's self-esteem. The cultural and spiritual aspects of the program are probably the most significant aspects and could act as a model for similar projects. The report was weakest in not providing hard, research-usable data nor in cultivating the concept of youth oriented diversion projects such as Neyunan as part of the movement toward Aboriginal justice program development and self-government.

3.3.3 Weafer, Linda Mary Francis. *The Development and Implementation of Community-Based Justice Programs for Native and Northern Communities: The Justice of the Peace Program in the Yukon Territory.* Simon Fraser University, 1986.

Literature/Program Profile

Weafer's analysis is focused on the Yukon Justice of the Peace Program (YJPP) which she compares to similar programs from certain provincial jurisdictions. There is no specific mention of when the YJPP actually started, but Weafer's research period was in 1984 and 1985. It is assumed the YJPP is on-going. She says the YJPP was developed to address the issues of the high involvement of northern and Aboriginal people in the territorial judicial process and to relieve a backlog in the youth court system where most cases involve young offenders of Aboriginal ancestry. Weafer writes, "Having the community become involved in the justice process could alleviate many of the formalities encountered by the criminal justice process and the confusion and alienation individuals may feel when they encounter this system" (p.38). There is no clear indication as to how and by whom the YJPP was developed - she doesn't name names - although there is some indication that a need for more community input was identified and acted upon by certain residents of various communities. For instance, she mentions the local Native Women's Association initiated a young offenders diversion program and that a small core of "dedicated individuals" provided the impetus for initiation of the YJPP. Major emphasis is placed on the program's implementation. Implementation of the program is carried out by the Crown through Justices of the Peace who by and large emanate from the Aboriginal community at large. A recurring theme of Weafer's analysis was that the program is an extension of the Crown with community input and control limited.

Aboriginal Control

The Crown has the final say in who is eventually to act as a Justice of the Peace (JP). However, potential JPs are recommended by community residents, RCMP detachments, lawyers, existing JPs and judges. Overall, Aboriginal control is minimal. An Aboriginal community may recommend one of its members for consideration as a Justice of the Peace, but there is no guarantee that the Crown will carry out the wishes of the community. Weafer indicates throughout her thesis a need for more Aboriginal Justices of the Peace and that, in many predominantly Aboriginal communites, the JPs are actually from the outside. It is not mentioned how many Yukon Justices of the Peace actually speak the language of the communities they serve.

Funding

Funding is not discussed.

Impact on Self-Government

Weafer does not discuss the YJPP in the context of self-government. The terms "self-government" and "self-determination" are not used. Her emphasis is on levels of community control and input in the development and implementation of the program. Community control in the YJPP is low; the program is an extension of the existing system. This seems especially true in communities where the majority of residents are Aboriginal. Community control is minimal; therefore, the impact on self-government coming from the community is minimal.

Program Evaluation

Weafer provides data on the development and inner workings of the YJPP but does not place the program in the context of being part of the movement toward Aboriginal self-government or self-determination. The YJPP carries out minor judicial duties in the field, but Territorial Circuit Court parties still fly in on a monthly or quarterly schedule to deal with major cases. She says that a Community JP, who finds a case too tough to deal with, often refers it to the circuit court. She also says that in some Aboriginal communities, cases have already been dealt with through traditional methods by the time circuit court has arrived and that to the residents, the circuit system seems redundant (p.30).

Does the Program Reduce Incarceration Levels?

No information that would indicate a clear impact on the reduction of high Aboriginal incarceration are included in Weafer's thesis.

Recommendations

Weafer points out that in every program studied there is evidence that the dominant criminal justice system has consumed the community involvement aspects of the programs to the point where they have transmogrified into mere extensions of that system. She is most critical of the Yukon experience. She writes that it is "a bureaucratic extension of the system with no community input whatsoever, especially in the context of the numbers of native people appearing before the courts" (p.151). She adds that "too much government control such as in the case of succumbing to a government mandate will further affect a program's operation, especially if such a mandate contradicts program objectives or philosophies" (p.159). Weafer concludes the governments will have to accept full, equal and on-going participation from the community from development to implementation of the program in order for the program to be successful.

Further Research

More work is needed in the area of how the YJPP fits into the self-government context. There needs to be more information about what the Aboriginal community in the Yukon thinks self-government is and if their ideas conflict with those of the present Canadian/territorial government. More work could be put into just what types of social sanctions were practiced before the development of the territorial system. She makes reference to such sanctions doing justice in the eyes of the community before the circuit court arrives. In other words, it seems the community returned to old-style justice in the prolonged absence of the circuit court.

Comments

Weafer focusses the greater part of her research on the Justice of the Peace Program in the Yukon Territory. The Yukon program is not operated by the Aboriginal community. Weafer's thesis is relevant to Aboriginal justice programs in that it provides an excellent assessment of what constitutes a community and provides a better than usual definition of authentic community involvement in designing and executing justice.

Weafer also examines the Community Justice Councils which operated in British Columbia in the 1970s, and provides thorough assessments of other programs such as the defunct High Level Diversion Program operated by the Native Counselling Services of Alberta in the early 1980s, the Ontario Native Justice of the Peace Program which is still in operation and has expanded, and the Saskatchewan Indian Justice of the Peace Program which ended unsuccessfully in 1981. These programs provide parallels that link them to the Yukon example.

3.3.4 *The Native Courtworker and Counselling Association of British Columbia. 1989 Annual Report* and brochure. Edited by Darlene Shackelly. North Vancouver, BC: Native Courtworker and Counselling Association of British Columbia, 1989. Printed report of 20 pages and brochure.

Literature/Program Profile

The annual report gives both President's and Executive Director's reports regarding changes during the year and projected for 1990. These include: the start of a training program for courtworkers and prison liaison workers, the expansion of the Youth Courtworker programs and the beginning of a non-profit society to prevent substance abuse. The history, philosophy and objectives of the association as well as details of the services in the five provincial regions are given. Sixty-three paid staff serve in 33 district offices.

Aboriginal Control

The NCCA appears to be an independent organization. It depends primarily on native people to staff boards and services. The philosophy spells out the determination to "be answerable to the native Indian community."

Funding

Revenue is received principally from both Canada and British Columbia grants but also from the Law Foundation and other undesignated sources.

Program Effect on Self-Government

Not stated in report.

Program Evaluation

Not described.

Does the Program Reduce Incarceration?

Neither the report nor the brochure addresses the question.

Further Research

Not addressed in this report.

Recommendations

None were given in this report.

Comments

The report is an overview only and does not give any indication of the day-to-day working successes and failures of the program. One must look for another source for these details.

3.3.5 Canada, Manitoba Attorney-General, Research, Planning and Evaluation. *The Manitoba Court Communicator Program - A Review.* Thérèse LaJeunesse. Winnipeg, MB: Attorney General, 1987, 47 pages plus 5 appendices. (Photocopy from bound copy).

Literature/Program Profile

The Court Comunicator Program was funded because of the high proportion of native people involved in the court system, in the hope that making the system more intelligible would help the situation. The stated purpose is "to assist native people to develop a better understanding of their rights, interests, privileges and responsibilities in relation to the criminal justice system" and "bridge...gaps [existing] between the criminal justice system and native people."

General duties of the Court Communicators varied greatly from setting to setting but were characterized in the executive summary as: explain charges, help arrange legal counsel, explain bail procedure, refer to alcohol/drug treatment and counselling sources, speak to sentence, occasionally interpret and other duties depending on location.

Aboriginal Control

Manitoba at the time of this report (1987) was "the only province in Canada where courtworker services [were] delivered by a non-native agency."

Funding

Federal/provincial cost-shared agreements funded the program, beginning in 1969, with grants from Indian Affairs and National Health and Welfare. Since 1972 the program was assigned to the Department of Justice.

Program Effect on Self-Government

The program appears to have no effect on self-government as of 1987.

Program Evaluation

The lack of program evaluation is addressed in the recommendation (#7) on statistical reporting. The area of experiential evaluation by clients was not addressed.

Does the Program Reduce Incarceration Levels?

This question was not addressed although it was one of the stated concerns when the program started.

Recommendations

a) About Underlying Principle

1. "...that a consultation process be initiated with native groups to determine whether an existing native organization or a separate native carrier agency should be established with a view to 'devolving' the Native Court Community Program to a native agency."

b) About Administration

2. "...that the objectives of the Program be re-assessed and re-formulated into a working model that would clarify the role of the Court Communicator."
3. "...that the Chief Court Communicator be relocated from the offices of the Native Clan to an office in the Court Services Division, and that reporting and accountability lines be strengthened consistent with the organization chart."
4. "...that serious efforts be undertaken to establish a representative Advisory Board comprised of native groups willing to participate in developing a stronger Program responsive to native needs in the province."
5. "...that the managers of the Program review the need for additional Court Communicators in the context of recommendations advanced in this report."
6. "...that a formal training plan be established for the new Court Communicators and an ongoing training program also be set in place on at least a semi-annual basis."
7. "...that the province of Manitoba engage in consultation with the Department of Justice Canada to establish a management information system that will address the statistical gathering needs of the Program."
8. "...that the feasibility of hiring interpreters on a fee for service basis be examined especially in the context of Thompson and its circuits" and "that the title of the Program be changed to 'Native Courtworker Program' to avoid the connotation of interpretation which seems to be implicit in the term 'Communicator.'"

c) About Enhancement

9. "...that a consistent effort be made by the Communicator to establish regular contact with inmates in remand and lock-up facilities, especially on Monday mornings."
10. "...that the schedules of the Court Communicators be examined in order to determine how [their] services could be augmented in the Youth Courts across the province."
11. "...that Communicators should provide follow-up to the accused by ensuring that [he/she] understands the sentencing dispositions."

d) About Promotion

12. that the Chief Communictor in consultation with individual Communicators, "...develop a strategy to promote the program with all members of court parties, other social agencies, client groups, native organizations and Band Councils on reserves."
13. that Communicators "...strengthen their community base through participation or regular contact with local native coordinating committees."
14. that the feasibility of Communicators "...attending on reserves a day prior to the circuit court sitting be examined with a view to trying this approach on selected reserves on a trial basis" (pp.45-46).

Further Research

1. How has the program impacted on Aboriginal incarceration levels in Manitoba?
2. Has the province taken any steps to devolve the program to Aboriginal delivery agencies?

Comments

The program appears to have been useful to those who were aware of its existence. As the recommendations on promotion suggest, it was not well understood by many people inside or outside the system. It seems probable from the report that to fulfil all the expectations, more worker hours would be necessary.

3.3.6 Sawatsky, Len. *A Report and Analysis of the Tribal Courts Symposium.* Sponsored by the Aboriginal Justice Inquiry, Winnipeg, MB, November 3 and 4, 1989. A report submitted to Intergovernmental Affairs, Prairie Regional Office, Ministry of the Solicitor-General, November 15, 1989, 26 pages and appendix which includes "Interlake Reserves Tribal Council Inc. proposal for Pineimuta Place, the Native Harmony and Restoration Centre," 12 pages.

Literature/ProgramProfile

Tribal courts in the USA are described in their diversity. They were officially begun in 1979 and have now increased to 120 courts involving 260 tribes. Although they use an "anglo" model of justice, they are able to utilize "traditional wisdom in relevant ways" (p.5) because of the right of each tribe to affect the functioning.

Judges, prosecutors, police and a special category of "court practitioners" (p.5) do not have to be lawyer-trained. Non-professional personnel are used in many cases because of their "experience" and integrity in the community (p.6).

A National Institute Justice Centre was established in 1983 to develop integrated on-going training programs. Judges, administrators, prosecutors and practitioners are trained together to encourage continuity of common goals.

Aboriginal Control

Because it is acknowledged that the tribal courts have the right to use Indian laws and traditions instead of state or federal law, Indian sovereignty is enhanced. However, the American Civil Rights and the Indian Civil Rights Act have caused tribes to think out the relationship of individual rights to community sovereignty and have resulted in "development of tribal and civil codes for tribal members" (p.3). U.S. tribal courts are not set up to accommodate the traditional process of dispute resolution but some are beginning to return to that custom.

Funding

The courts operate on federal funding which is vulnerable to possible lack of political support. The National Indian Justice Centre operates on federal money through the Department of Indian Affairs.

Program Effect on Self-Government

Control over judicial matters is seen as enhancing the internal sovereignty, dignity, integrity, competence and self-esteem of Indian communities. "The paramount factor used in justifying TCs...was...inherent sovereignty" (p.18).

Program Evaluation

The question is not addressed.

Does the Program Reduce Incarceration Levels?

Based on the comments of several speakers "...it is clear that the American application of [tribal court] administration is not an effective means of crime prevention. Some speakers even mentioned that crime rates have gone up..." (pp.17-18). However, much greater effectiveness of the Peacemaker Courts (developing internally on one reservation) was demonstrated by a 10% recidivist rate (p.3). This statistic suggests confrontational methods of the tribal courts (accepted from the surrounding system) were still prevalent. Incarceration levels were not yet offset by the community control which they offer.

Recommendations

The author recommends that the Canadian justice system must allow some form of self-determination by Aboriginal people in the administration of justice immediately. He says, "The present generation of native leadership are for the most part reasonable people with whom negotiations are entirely within the realm of possibility if the principle of self-determination is endorsed by the federal government. In light of the growing impatience and awakening among Aboriginal people about injustices suffered, we have no such assurance in the next generation of leadership."

Further Research

He further recommends that in Canada, because of the clear separation of federal and provincial responsibilities for justice and for Indian affairs, "...the possibility of concerted action of a national scope...is much more feasible in Canada" (p.4). In the short run, "...one possibility is for federal and provincial Attorneys-General to suspend the limitation of current laws in order to permit pilot projects of limited duration to demonstrate Aboriginal justice systems structured and implemented by native people" (ibid.). Another option would be "to use existing loopholes and flexibilities of current legislation, policy and practice" (ibid.). The ***Young Offenders Act*** encourages alternate measures as do some of the alternate sentencing allowed for adults. The use of a Native Parole Board could also be arranged without changing any laws. An example of the alternate use of corrections, the Native Harmony and Restoration Centre proposal for Pineimuta Place is appended. These pilot projects could then be assessed.

Comments

The purpose of this report was to summarize content of the Symposium and analyze it for the use of policy development in the Ministry of the Solicitor General of Canada. It was not suggested that the American system be adopted in Canada, although the author seemed to feel it had some possibilities for adaptation. The conflict between the adversarial nature of the host system, based on an alien ideology of "individual rights" and that of the traditional communal view of Indian people was noted by many speakers and was not completely resolved.

The stress between the two ideologies was noted in various ways and given different degrees of importance by the contributors. For one thing, unlike the Indigenous Peacemaker Court which was mentioned briefly, the courts had not reduced crime but it appeared to have risen (p.18). Then too, jurisdiction between tribal courts and the federal courts is a problem. The tribal courts were limited to civil misdemeanors in many cases, but if the offense was taken to a federal court first, it could dispose of the matter. It was suggested that "...jurisdiction is even more twisted if there is a conflict between two tribal courts over a non-member Indian" (p.8). He/she could conceivably have to face prosecution in two courts.

3.4 Corrections

3.4.1 Canada, Corrections Branch, Ministry of the Solicitor General of Canada. *Aboriginal Substance Abuse Treatment Centres and Aboriginal Federal Offenders.* User Report Number 1988-17 by Marcia B. Krawll. 1988, 109 pages.

Literature/Program Profile

Krawll's User Report assesses the types of drug and alcohol treatment programs available to Aboriginal inmates within the federal correctional system. She then examines the Aboriginal Treatment Centres (ATCs) operated by the National Native Alcohol and Drug Abuse Program (NNADAP). Krawll sees a potential relationship between the federal Corrections Branch and NNADAP. She expresses a desire for more formal links to be established between the two departments as a way of dealing with Aboriginal over-representation. Her rationale for promoting development of this relationship is based on the premise that deeply rooted drug and alcohol problems are behind the high Aboriginal incarceration and recidivism levels.

In addition to information provided in part A of the report, Krawll provides extensive detail on the 55 Aboriginal treatment centres operating in Canada in 1988. Treatment Centre information is presented on a chart according to client intake; whether the centre takes male/female clients; client age restriction; geographical limits; type of services; whether services are in-patient, out-patient, detoxification or other; whether services include one-on-one, family or group counselling; whether programs include a cultural component, recreation, vocational training, education training or the Alcoholics Anonymous program (Narcotics Anonymous is not mentioned); program length; whether or not federal offenders are accepted; and if the centre is physically disabled accessible.

More specific information is included on each treatment centre at a rate of one page per centre: (i) the Centre's name, address, phone number and contact person, (ii) policy criteria for accepting released offenders, (iii) areas or band served (it is not specified if non-native, Metis or non-Status Indians are included or precluded), (iv) treatment services, (v) length of stay, (vi) number of beds, (vii) program services, (viii) client intake, (ix) required documentation, (x) funding source, and (xi) accessibility.

Aboriginal Control

The author says the establishment of Aboriginal Treatment Centres (ATCs) were a response to calls from Aboriginal people who stated that substance abuse treatment must include a strong "cultural component" (p.8) because available research literature supports the hypothesis that Aboriginal people respond well to culturally specific programs (p.2). She says, "to date there are over 55 planned or established ATCs within Canada that are controlled or operated by Aboriginal people" (p.9). The exact nature of control exercised by the Aboriginal community is not spelled out in specific terms. It has to be assumed that in the case of the treatment programs offered inside the prison walls Aboriginal control would be minimal. It has to be assumed that since Aboriginal elders are best equipped to provide cultural education and that ATCs located in Aboriginal communities have elements of community control, that control would be far greater in this case than in the ATCs within the correctional facilities.

Program Funding

Funding for the ATCs is almost exclusively federal except for a small number of centres funded by provincial government. NNADAP's funding is federal.

Program Effect on Self-Government

Krawll is not viewing the proposed link between the ATCs and the federal correctional facilities as a step toward self-government. She appears to be more interested in the rehabilitative value of the program and its applicability to the federal correctional system. Krawll does, however, recognize the value of cultural knowledge held by Aboriginal elders.

Program Evaluation

The Treatment Centre Program is based on crime and recidivism prevention rather than as a component of a parallel Aboriginal justice system. Krawll does not indicate any specific definition of Aboriginal self-government or self-determination. She implies that a sufficient level of community (Aboriginal) authority exists within the ATC and NNADAP network. The ATC program is fairly new. Some of the centres were not in operation prior to 1988. Pre-1988 centres provided models for the development of the nation-wide network.

Does the Program Reduce Incarceration Levels?

Krawll provides no evidence to indicate whether or not incarceration levels have been reduced as a result of the ATC program.

Recommendations

The author states that current programs co-sponsored by federal correctional facilities and some treatment centres are insufficient but more appropriate programs could be set up if facilities and ATCs established a "more formalized network" (p.37). Krawll further states that "in order to decrease the rate of recidivism for alcohol and drug related crimes and to successfully reintegrate Aboriginal offenders back into the community as law-abiding citizens, a treatment program especially designed to meet the needs of this specific population and the use of staff experienced in dealing with offenders are necessary conditions for effective intervention" (p.39).

Further Research

More research should be done into how programs such as ATCs could be developed into components of alternate Aboriginal justice systems. It would also be beneficial to know how control is maintained; are the boards of directors controlled by Aboriginal people? Statistical data could also be provided regarding recidivism among inmates who have gone through ATC programs. Such data would help determine whether such programs are affecting incarceration levels. The area of funding/costs could also be researched. For instance, would it be cheaper in the long run to put federal inmates through ATCs, or to maintain the present treatment programs?

Comments

The author has compiled some very detailed information on individual ATCs. This is in keeping with one of her stated purposes, "to provide a compendium of services." Her report gives the user a guide to programs, available to Aboriginal inmates in all of Canada.

3.4.2 Native Counselling Services of Alberta. *Native Corrections Employment Integration Initiative.* WL Willier. November 1989, 11 pages and appendices.

Literature/Program Profile

This is a training program for corrections workers to be taught by the Grant MacEwan Community College. The initiative is meant to upgrade the existing Alberta corrections system by providing additional correctional workers into the system who are of Aboriginal ancestry. NCSA's reasoning for this type of program is that high numbers of Aboriginal inmates would respond more favorably to a corrections systems that had more Aboriginal people on the front lines. The numbers of inmates should be reflected by similar numbers of guards.

Aboriginal Control

Control of this training program would rest with the political structure of the NCSA itself. Aboriginal control of the Alberta criminal justice system is minimal at best. According to the program prospectus (p.16) only four days is devoted to "native awareness" so it does not appear as though much Aboriginal content is contained within the curriculum. The level of Aboriginal control in this inititative is minimal. However, the paper alludes to future advantages:

- better communication between offenders and the administration,
- increased awareness and sensitivity of decision-makers,
- role models for offenders and other staff,
- climate of greater trust within the system (p.5).

Funding

NCSA which will oversee the project receives funding from the Federal Department of Justice, the Federal Solicitor General, Provincial Solicitor General, Alberta Social Services and the Alberta Law Foundation (p.1). It appears from the description that the training would be accomplished through the organization in consultation with Alberta Career Development and Employment, Canada Manpower, Band Councils, Metis Locals and other native organizations (p.5), but the native control of funding decisions are not spelled out.

Impact On Self-Government

Since a high degree of Aboriginal control is beyond the scope of this initiative, any impact on self-government would be minimal.

Program Evaluation

It is not possible to tell how the program was developed or whether and how it involved Aboriginal people. At this point, it appears to be attached to an established, non-Aboriginal corrections worker training program.

Does The Program Reduce Incarceration Levels?

It is hard to see how a program to train Aboriginal people to work in Corrections could work towards reducing incarceration levels. Aboriginal staff acquainted with Corrections might, however, go on to work in alternative sentencing community programs.

Recommendations

No further recommendations were made in this paper.

Further Research

The feasibility of a corrections worker program that is fully under the influence of Aboriginal people is worth exploring. This could include the influence of elders in developing a system such as that suggested by the Saddle Lake Tribal Justice Centre. Although incarceration is foreign to Aboriginal culture, what is to be done with offenders who commit serious crimes such as murder, rape, armed robbery or other violent crimes, should be explored. ***De facto*** banishment could be effected by handing such offenders over to the existing federal correctional system for lengthy incarceration periods much in the same way as it is done now. Another area that could be looked at is whether or not existing correctional facilities could be taken over by Aboriginal governments and be gradually phased out as the traditional mediation, arbitration, and restitution methods are restored. Data could be kept to see whether or not the old system is working or to test other ways of adapting traditional correctional methods to customary problems. Alcohol and drug addiction rehabilitation would be one area that could be utilized in this model.

Comments

Such a program would be useful and quite valuable in making the exisiting Alberta criminal justice system more workable for Aboriginal people. It would be an immediate way of addressing the problem of high Aboriginal incarceration rates but it is by no means the way to prevent this. A more autonomous system would be required for that to happen.

3.4.3 Poundmaker's Lodge and Rutland Consulting Group Ltd. *The Effectiveness of Native Halfway Houses in the Treatment of Alcohol and Drug Abuse.* Edmonton, AB: Poundmaker's Lodge, 1984, 37 pages and 5 appendices (photocopy).

Literature/Program Profile

This is a description of a research project begun October 1983 which gathered information from native halfway houses in the United States. Both a literature search and a survey of five selected halfway houses and a few of their ex-patients were conducted.

Aboriginal Control

All five halfway houses studied were run by native personnel and were located on reserves, making use of native cultural components such as sweatlodge ceremonies (p.12).

Funding

The American halfway houses were non-profit, tax exempt societies but all received some funding from the federal department of Indian Health Services and had to submit a detailed budget to that agency (p.12). They also received some money from State funding and from Indian bands (p.14).

Program Effect on Self-Government

The study suggested that in response to the 1960s initiatives of the U.S. Indian Health Service to involve Indians in their own health program decisions, Indian bands began to develop "their own Health Boards and other tribal entities" (p.8).

Program Evaluation

The literature review emphasized the effectiveness of small halfway houses which had few but clear rules, where interpersonal bonds may begin and a bridge may form to the surrounding non-alcoholic society. But the researchers cautioned that follow-up reports of the five facilities studied were inadequate and marred by methodological shortcomings, so they were not able to substantiate that supposition (p.32).

Does the Program Reduce Incarceration Rates?

There is no attempt in this study to link the halfway houses with incarceration. The linkage with sobriety is stressed, however.

Recommendations

The authors do not give unequivocal endorsement of the halfway house concept but recommend a "pre-feasibility study" to determine the effectiveness of halfway houses in rehabilitation by adapting an existing

treatment centre belonging to the National Native Alcohol and Drug Abuse Program to a halfway pilot project in order to address procedures for program evaluation as well as the physical facility needs (pp.36-37).

Further Research

In addition to the ones noted in the Recommendations, once the pilot study is complete, questions for further investigation would be possible; e.g., are offenses by half-way house participants fewer than for people not treated in this manner?

Comments

The appendix contains the detailed descriptions of the five U.S. halfway houses studied and would be useful after the completion of the evaluation study. The report also contains numerous forms used by the facilities as well as statements of philosophy.

3.5 Diversion

3.5.1 Nelms-Matzke, Joyce. *Rediscovery Program: A Review.* December, 1982

Literature/Program Profile

This was an outdoor camping/recreational program that was based in the northern Queen Charlotte Islands off the coast of British Columbia. The program was aimed at youth from local Haida Indian communities, some of whom were in trouble with the law, but it was open for non-Aboriginal youth as well. The program was in its fifth year of operation when this report was filed. One of the stated objectives of this program was "to reduce the juvenile crime rate" (p.24). But this goal and another similar one were later dropped from the list of goals and objectives (pp.24, 88). Participants would camp out in a semi-isolated island location for two to three week periods. They would be taught local methods of food gathering and cultivation and rely mainly on their own abilities, or the abilities of the guides, for survival. There was a permanent base camp but participants would spend time on hikes away from the base or on kayaking expeditions. There was a strong Haida cultural component influenced by Haida elders (pp.39, 40). Part of the program was spent in an ancient Haida village which participants had helped reconstruct and one portion of the program for older participants consisted of spending a night in the bush alone and with no food. The program started out as an approach to diverting youngsters away from the court system but as the years went by the program moved away from dealing with young offenders to dealing with youth in general (pp.24, 88). At the time this report was prepared, the Rediscovery Program was ongoing and a winter component was being introduced.

Aboriginal Control

The extent of Aboriginal control was not apparent through this report. Control of the program was exercised through the board of directors but no information is provided as to the board's size or whether it was made up exclusively of Aboriginal people or whether Aboriginal people even formed a majority. It appears as though the board was made up of interested parties and was not necessarily elected from the local Aboriginal communities. As well, there is no mention of formal connections with local band councils, tribal councils or other Aboriginal governments. There was an opinion expressed by the manager of one local band that the program "appears to be entirely controlled by the Haida" (p.68).

Funding

Rediscovery was supported jointly by the federal Ministry of the Solicitor-General and the British Columbia Attorney General's department for the first three years of operation (p.10). The overall budget was in the $50,000 to $65,000 per year range. The author reports that after the initial three year period, federal funding was withdrawn and organizers had to find alternative sources. They managed to secure a substantial amount of support from a Vancouver Foundation and raised some money on their own through the sale of greeting cards designed by local artists. Funding was always a problem but unlike programs such as the Neyunan Project, there seems to have been larger amounts available for longer periods of time. The report's author has included detailed financial spreadsheets that indicate total revenues raised, funding sources, where money was spent, job descriptions, and so on (pp.94-99).

Impact On Self-Government

This program was not dealt with in the context of self-government. In the early days of the program it was completely under the jurisdiction of the federal and provincial governments and members of the program's board of directors, an entity apparently autonomous from the recognized Aboriginal organization structures. However, the author noted strong community support for the program. It is probably safe to say that Rediscovery did have some impact on the early beginnings of developing a justice system as part of a move toward Aboriginal self-government.

Program Evaluation

This report was prepared as a description and not a formal evaluation of the program (p.80). Most of the information was gathered by an on-site visit by the principle investigator. She travelled to the program and spent a few days talking to the guides, to the participants and to members of the nearby communities. Several tables indicating age, sex, ancestry and home communities help to form a profile of the participants. Most information shows how the program proceeded on a day to day basis, how internal conflicts were resolved, or what local adults thought about the success of the program.

Does The Program Reduce Incarceration Levels?

The author says that when the program was first conceived in the late 1970s, 85 to 90 per cent of the local probation officer's caseload was made up of Aboriginal people (p.5), but that when this report was prepared there was a "move away from criminal justice system referrals" (p.83). Whether or not this is because incarceration levels were reduced so drastically that clients had to be sought from outside of the criminal justice system is unclear. She also quotes from the program's 1981 annual report that claims there was an 85 per cent reduction in juveniles on probation since 1978, but also points out this claim was not supported by the probation officer. No government statistics or other sources are provided to substantiate this claim.

Recommendations

Several recommendations are made for streamlining the program. None of the suggestions are along the lines of integrating the program into sentencing or diversion alternatives as part of either the mainstream criminal justice system or part of an autonomous Aboriginal system. Some of the recommendations listed on pages 80 to 86 are:

- targeting the 10-12 year old age group for Phase I of the program (camping as opposed to extended kayaking trips);
- targeting older youth for a more advanced program;
- more staff training in handling interpersonal relationships;
- expanding and improving camp facilities, especially reconstructing a longhouse style main camp building;
- improve record and information keeping;
- setting up of a record keeping system that facilitates quantitative evaluation; and
- ensuring the board of directors has full knowledge of the program's day to day operations (p.86).

Further Research

The author made a strong recommendation that a system of quantitative measurements be implemented but she did not specifically refer to better assessing the program's effect on Aboriginal incarceration levels or its relevance to self-government. No information was found about the present status of the Rediscovery Program. Some updating information about this program or other similar programs that stemmed from it would be useful.

Comments

Rediscovery was implemented prior to the constitutional advances made by Aboriginal groups during the mid 1980s. This could explain the absence of the concepts and terminology that have since come into use by Aboriginal people and governments. Rediscovery could serve as a prototype for other programs that would be part of an integral part of a justice system run by Aboriginal people.

3.5.2 Native Counselling Services of Alberta (NCSA). *The High Level Diversion Program*, January 1981, 41 pages.

Literature/Program Profile

This is a report of an evaluation of community support for the diversion program. The High Level Diversion Program (HLDP) was first proposed by the NCSA in 1976 (p.9). Work on the project began in November 1977 and the first clients were accepted in January of 1978. The program was on-going at the time this report was submitted three years later in January 1981. Its goals and objectives are spelled out in detail (p.5). The premier goal is to "break the cycle of offending and incarceration" by Aboriginal people. Other objectives:

a) encourage community participation
b) educate individuals about the system
c) minimize the penetration of citizens into the formal system
d) provide a means of determining just penalties, considered fair by both victim and offender

Secondary objectives:

a) inform the communities of the process of diversion
b) evaluate the resources in the community
c) encourage growth of new resources
d) maintain adequate levels of peace and order in the community
e) monitor the criminal justice system

Aboriginal Control

Throughout the related program literature, NCSA is billed as a private, non-profit organization.

Funding

Funding came from the Federal Ministries of Justice and Solicitor General. The program ran with the cooperation of the Alberta Attorney General. Information provided leads to the conclusion that the HLDP was underfunded to the point where this recurring problem led to its demise. There was mention of time periods for which funding was available but no mention of total funding available for that particular period. A proposal for a diversion program was submitted in September 1976, and funds were eventually received over one year later in October 1977 to cover salaries for a director and a secretary until July 1978. In August 1978 NCSA submitted a proposal seeking enough funds to pay for a director and a secretary plus three field workers for a three-year period. What they received was one year of funding for a director and a secretary. The program was to be evaluated in November of 1979 as a prerequisite for continuing support (p.9). In October 1979 NCSA submitted a proposal for a two-year period but could only reach an arrangement that would provide funds on a monthly basis from November 1979 to April 1980 and provide another block of funds to last the 1980-1981 fiscal year (p.10). It is not mentioned if NCSA ever received sufficient funds for the additional field workers.

Program Effect on Self-Government

The report of the evaluation of a community support for the High Level Diversion Program states that "there was no consistent representation of interested parties in discussions surrounding the project" (p.20). It also states that "not all parties involved in the program had understood or necessarily agreed with changes made in the program in response to local conditions" (p.20). In addition, "isolated pieces of correspondence reveal some confusion about the area which the project was to cover" (p.21). It appears that local bands were not encouraged to take responsibility and were not consulted about their wishes. It appears to have been imposed by the NCSA and that group attempted to control it. However, in effect, they too lost control to the RCMP and to the Attorney General's agents.

Program Evaluation

This report is the result of evaluation of community support. The report states that the "Federal Ministry of Justice was responsible for the research and evaluation component of the project during the 1980-1981 fiscal year" (p.21). Until that time, no evaluation was performed. At least part of the reason given was shortage of personnel who besides the diversion work were expected to "generate progress reports and write funding proposals on a very frequent basis because of the short-term funding given (p.22). The report suggests the lack of research and evaluation contributed to the confusion between different participating community groups (p.23).

Does the Program Reduce Incarceration Levels?

This report did not refer to that aspect of evaluation.

Recommendations

Few recommendations were stated, but some were implied.

- greater efforts in educating the community
- greater attempts to meet the community's needs
- secure on-going funding
- regular systematic evaluation and reporting
- clear lines of control and communication
- cooperation of local and regional police and prosecution authorities

Further Research

Since this program was terminated in 1981, it would be necessary to look elsewhere for research possibilities.

Comments

The history of this program suggests the necessity for basing imaginative programs firmly at the community level. The need to plan carefully, to involve all players in the planning segment, also came through the report. Because the essence of diversion is in the community's role in redirecting the offender, the community must be involved in the decisions and kept informed. However, sometimes a pilot project can be used to educate a community to a new way of solving a problem. This project had that as a secondary objective.

3.5.3 Native Counselling Service of Alberta (NCSA). *Final Report on the Demonstration Phase of the High Level Diversion Program, 1977-1981.* July 1981. Edmonton. 21 pages.

Literature/Program Profile

This report complements a previous report issued by NCSA in January of 1981. See previous annotation. It includes details of staff responsibilities and statistics about people served. It purports to be a wrap-up and final commentary on the "demonstration phase" (p.1) six months after the government funding ceased. At this point Native Counselling Service of Alberta had kept the program operating on a limited basis in order to have the last clients complete their agreements in June 1981 (p.1). However, this paper also appears to be a part of a plan to reactivate the program (p.2). Some hindsight about problems and their proposed solutions is also included (pp.18-20) and would be useful to other similar programs.

Aboriginal Control

The extent or method of exercise of Aboriginal control is not dealt with in this report. Any Aboriginal control would lie with NCSA and its board of directors. It should be noted that NCSA is not part of the Indian Association of Alberta or of the Metis Association of Alberta. Since the program is essentially community-based there would be a medium level of Aboriginal control involved in this program. However, this report notes there is community support and demand for diversion services. Since the Native community shows little inclination to participate in alternate programs such as Fine Options, Community Work Orders (p.2), the community-based diversion program are believed to be "particularly appropriate for Native communities in smaller, isolated centres which may have a similar cultural tradition" (pp.2-3).

Funding

Appendix E is said to deal with some funding specifics but was not included with the copy of our report. Some of the program funding is provided by the federal Solicitor General and the Alberta government covered the costs of the program's review (p.4). A chronic lack of funding is regarded as a major hindrance to progress.

Impact on Self-Government

The HLDP and the NCSA appear to be operating seperately or at arm's length from the mainstream Aboriginal organizations such as the Metis Association of Alberta and the Indian Association of Alberta. NCSA's mandate deals strictly with the criminal justice system. NCSA is billed as a non-profit organization. No information about its membership or board structure is included and any impact on self-government self-determination is difficult to assess.

Program Evaluation

There is some data included in the report including tables reflecting the numbers of people in contact with the HLDP, the nature of their offences, their gender and residence, and whether or not they re-offended. Most of the client information was generated by HLDP staff but some was provided by the local RCMP detachments in High Level, Assumption and Fort Vermillion. Re-offence rates were used to measure the effectiveness of

the program (p.12). It is reported that 39 out of 53 clients did not re-offend (p.13) and this amounted to a 70 per cent success rate (p.12). However, it was also noted that time lapsed between offences varied between three days and three years. The HLDP was also compared to a diversion program in Mid Island, a community situated on Vancouver Island near Nanaimo and run by the John Howard Society, a non-Aboriginal institution. The Mid Island program had a much lower per centage of Aboriginal clients, covered a wider range of offences, handled over one thousand clients per year and enjoyed permanent funding (p.15).

Does the Program Reduce Incarceration Levels?

According to the research data presented and according to several remarks made throughout the report, this program did reduce the number of repeat offences in a relatively short period of time.

Recommendations

The Native Counselling Services of Alberta recommended that "more such projects be developed across the country."

Further Research

No further research was recommended by NCSA. However, a literature review of other programs (besides the Mid-Island Diversion Program of B.C.) might be of use to other communities who want to use a similar process.

Comments

It appears that lack of funding and control led to the demise of this program, but that with further refinement the idea has merit especially within an Aboriginally-controlled justice system.

3.5.4 Lane, E. *Creating a Monster - Issues in Community Program Control.* A paper presented at the C.A.P.C. Conference, Winnipeg, July 1981, 12 pages (photocopy).

Literature/Program Profile

The paper describes briefly the High Level Diversion Project begun in 1977 and later terminated for lack of funding. It lists objectives of the project as:

1. funding alternatives to imprisonment for minor offences and for fine defaults,
2. keeping minors out of court (prevention of a criminal record),
3. involvement of community members in the process,
4. development of agreements between victims and offenders to compensate for offences.

Funding

The main funding came from the Federal Ministry of Justice and the Solicitor General but depended on cooperation of the Provincial Attorney General and the RCMP.

Program Evaluation

The author suggests that the project was subverted early in its existence when the Diversion Screening Committee with its community base was bypassed by the crown counsel and the RCMP. Thus, the number of people referred to the committee was low. However, of the 57 persons who took part in the project, 53 completed the agreements and 70% of these had not by reporting time been known to re-offend. The awareness and support in the community with respect to possible alternatives to jail was heightened because of the project and remained even after termination.

Does the Program Reduce Incarceration Levels?

Because the referral rate was low and the project lasted only three years, it is not possible to give firm statistics regarding effects on incarceration. However, it appeared to have reduced these amongst those the crown allowed the committee to work with. The NCSA believed, however, that the crown's refusal to allow liquor and minor break and enter offences to be referred missed the point of the program and that these had excellent prospects for diversion.

Recommendations

The NCSA authors stress the need to build in a firm mandate for community control to preserve the flexibility and approachability intended by the project and to prevent the take-over by the more rigid generic system.

Future Research

More information is needed about the types of offences and offenders best handled by the diversion approach. Research involving larger numbers of Aboriginal people is need to corroborate the findings from the low figures produced by this project.

Comments

While this article refers only to Aboriginal justice programs working within the generic system, it stressed the importance of community control over the adjunct services if they are to reduce incarceration levels. The frustration of the program with the mainstream system shows the need for greater Aboriginal control of the system itself.

4. CONCLUSIONS

4.1 Openers

Several preliminary points arise from the above annotations. The largest section addresses general questions about Aboriginal-control in justice systems. This suggests that the discussion of Aboriginal-controlled justice systems is still very much at a conceptual stage.

Furthermore, the next largest section, where the most discussion on justice programs is occurring, is on policing. This may reflect an awareness that if Aboriginal-controlled justice systems are to develop and the over-incarceration of Aboriginal people to end, the front-end of the criminal justice system must go through major changes. Pressure for Aboriginal police forces is likely to increase.

The fourth largest section, on diversionary programs, further reinforces this emphasis on changing the front-end of the criminal justice system. The number of annotations in this section, however, tends to inflate the development of Aboriginal-controlled justice programs since most of them are about the development of one program.

Finally, the fact that the smallest section is on corrections could suggest two very different things. One is that there is greater underdevelopment of programs regarding Aboriginal control of the back-end of the justice system. While this may be the case, it is not necessarily a problem. If major goals of Aboriginal control of justice programs are to end the over-incarceration of Aboriginal people, and to enhance self-government, then it makes sense to focus on diverting from the front-end of the criminal justice system and creating fundamental alternatives to corrections.

At the same time, unless a lot more is known about the needs of those presently being incarcerated, as a basis for advocacy, care and early release into community programs, all this talk of decarceration and self-government may pass by the inmate Aboriginal population. We know from various studies that Aboriginal inmates have far fewer probation or parole programs available to them. As such, systemic discrimination at the back-end (as well as the front end) of the criminal justice system clearly contributes to time spent in corrections.

4.2 Apparent Trends

4.2.1 General

The general literature located suggests that Aboriginal organizations are interested in and deliberating on how to better gain control of justice programs. These annotations include discussions from four provinces: Ontario, Manitoba, Saskatchewan and Alberta. Whether the discussion of Aboriginal control of justice occurred at a community level (e.g., Osnaburgh, Saddle Lake, Split Lake) or at a more provincial political level (e.g., Federation of Saskatchewan Indian Nations, Manitoba Metis Federation) an Aboriginal-

controlled justice system is seen to be important and even fundamental to self-government. Explicit or implicit support for a parallel justice system is given.

There is also a clear emphasis on building upon customary practices of Aboriginal peoples such as peacemakers. The need for justice services and related human services to be community-based is also apparent. There is, however, no direct discussion about the kind of economic base which would be required for the kind of Aboriginal-controlled justice system to emerge and expand.

4.2.2 Policing

The bulk of the literature located on Aboriginal-controlled policing has been written by non-Aboriginal government officials and academics. The annotations on policing still provide a good overview of the quest for more Aboriginal control over policing in Aboriginal communities. All the major programs in existence in Quebec, Ontario, Manitoba and Alberta are discussed. Furthermore, there is general agreement that Aboriginal-controlled policing is a significant aspect of self-government. All programs, no matter what their stage of development, seem to be wanting greater Aboriginal control.

The contrast between federal or provincial police and Aboriginal police forces is explored from several angles. There is attention to the steady increase of policing that reflects the so-called 3(a) Option previously rejected by government, and the serious limitations of the 3(b) Option pursued by the RCMP. At the same time the question is posed whether the key to Aboriginal control is primarily a separate system of accountability, or also includes the nature of policing itself.

There is no apparent agreement about whether or not Aboriginal-controlled policing would be directly aimed at reducing incarceration. This suggests that the concern with traditional and customary methods of justice, emphasized in the general conceptions of Aboriginal control, is not necessarily being translated into the creation of Aboriginal police forces at this time. More pressing and immediate problems requiring police services seem to exist within Aboriginal communities. This suggests that Aboriginal communities face a similar dilemma as non-Aboriginal ones regarding how to establish preventive approaches when dealing with the immediacy of social conflict and crime control. The need to do this probably remains more pressing among Aboriginal people.

The funding issue is directly raised. On the basis of these annotations it is clear that the funding base for Aboriginal-controlled police forces varies greatly across Canada. Only in Alberta does it appear that funding has shifted away from overwhelming federal dependency. There appears to be no consistent federal policy influencing the direction of developments. Again, this raises questions about what would be the economic base for Aboriginal self-government.

4.2.3 Courts

All but one of the documents annotated on court programs and processes were undertaken by non-Aboriginal organizations or researchers. As in other areas, the lack of Aboriginal self-determination seems to translate into a lack of control over the discourse and reflection on justice programs. Nevertheless, the annotations do provide an overview of some of the substantive program and policy issues involved in Aboriginal control being better exercised within this part of the justice system.

Courtworker programs have clearly been the main way to enhance Aboriginal participation and/or control in the court process, With the major exception of Manitoba, these have been delivered by Aboriginal groups. The question, however, remains as to whether these programs actually enhance self-government.

The dilemma and urgency remains, however, as to what to do once the courts are involved to try to reduce the high incarceration rates among Aboriginal people. Regardless of one's perspective on the relation or non-relation of courtworkers to self-government, the cutting of the courtworker program in Saskatchewan, which appeared to have reduced incarceration in a province with the highest rate of incarceration of Aboriginal people, has clearly not helped Aboriginal people address the crisis of over-incarceration.

Though most courtworker programs have been delivered by Aboriginal groups, there has been clear pressure from funders and controllers to organize (e.g., centralize) these programs in such a way that community control will be minimized or non-existent. This is an overriding trend which has also affected the dominant society and mainstream programs like legal aid. This bureaucratic and policy trend clearly undercuts the opportunity for courtworker programs to work with and from a more Aboriginal perspective which takes the whole person and his or her cultural and other needs in the community into account. Were the mediation-diversion objectives of the ***Young Offenders Act*** to have been better and more fully implemented, there would have been a greater chance of courtworkers programs reinforcing Aboriginal control and cultural perspectives at the community level. The Neyunan program in Alberta seemed to have had this potential.

Clearly the same trend and tension has existed with Aboriginal Justice of the Peace programs. Little community control has existed. Though community control does not automatically translate into processes for self-government, there is more chance of building customary practices into a community-based system.

4.2.3.1 Tribal Courts

The devolution of federal and provincial control of courtworkers or other court programs to Aboriginal organization clearly opens up questions of self-government. However, from a more fundamental perspective, tribal courts are seen to be necessary to create a truly Aboriginal-controlled justice system which strengthens self-government. Though the U.S. tribal courts do not directly translate into Canadian conditions,

they still pose the basic questions that need to be addressed when creating Aboriginal-controlled justice programs which further self-government.

The U.S. tribal courts do not tend to incorporate customary practices like dispute resolution, nor to have reduced crime rates. Furthermore they are not generally involved in criminal cases. Still they are seen as an aspect of sovereignty and are being challenged to grapple with both individual and collective rights. If it is the case that the Canadian federal system is more flexible than in the U.S., then a tribal court system as part of parallel justice system enhancing self-government may be more possible in Canada. We will return to this question of a parallel justice system in section 4.3.

4.2.4 Corrections

Though there were fewer annotations on corrections, there was more involvement of Aboriginal organizations in the creation of documents annotated under this section than under other sections. Clearly the depth of Aboriginal control and the link to self-government is harder to establish in the case of programs within correctional institutions than those existing in other areas. If anything, the incarceration of Aboriginal people reflects a fundamental lack of self-determination and self-government. Yet, because of the extreme needs among the Aboriginal people who are the human face behind the statistics on over-incarceration, it is not surprising that some Aboriginal organizations have made direct human service to Aboriginal inmates their priority.

This reality is vividly shown by the high level of alcohol and other drug-related offences among the Aboriginal population incarcerated in Canada. The impressive network of Aboriginal-controlled alcohol treatment programs across Canada is testimony to the commitment to self-help.

Alcohol-related problems are one impediment to self-determination, and a social rehabilitative approach may be necessary to launch more momentum for self-government. Although it is not sufficient, the emphasis on Aboriginal approaches in treatment programs (e.g., the sweatlodge) can strengthen the cultural basis for self-government.

These programs within correctional institutions funded by government are not likely to directly enhance self-government. Furthermore, the attempt to indigenize the correctional staff that oversees and controls Aboriginal inmates suffers from the same limitations as past attempts to indigenize policing. It is possible that Aboriginal employees from within correctional institutions may move to programs committed to providing alternatives to incarceration, or that such Aboriginal employees will be better able to prevent inmates from returning. By itself, however, this "affirmative action" approach would be a very inadequate strategy for reducing incarceration and enhancing self-government.

Yet, the human needs of Aboriginal inmates are great. A focus on halfway houses, which links health as well as justice to the quest for self-government, would provide the opportunity for greater

Aboriginal control of programs. Culturally meaningful approaches could be better emphasized in this context.

The fact that more funding is apparently available for programs to address the needs of Aboriginal inmates than to prevent the incarceration in the first place, only goes to emphasize the deep structural and policy contradictions facing those working to link decarceration and self-government. Clearly addressing the needs of Aboriginal individuals within corrections has to remain part of such a strategy. The danger remains of the absorption of limited resources by treatment programs undermining the fundamental objective of prevention or, as a start, diversion.

4.2.5 Diversion

It is probably symptomatic of dominant trends in the criminal justice system that so few documents on diversion could be located. Only diversion programs in British Columbia and Alberta could be located. Most of the documents located on Aboriginal-controlled diversion programs, however, were prepared by or for Aboriginal groups.

Government control and underfunding plague the few programs that exist. A lack of support from within the mainstream system for Aboriginal-controlled diversion is apparent. Furthermore, community-based diversion programs do not compare well in numbers or stability with the impressive network of Aboriginal alcohol and drug treatment programs within the correctional system. Yet what little evidence exists from the few Aboriginal-controlled diversion programs that appear to exist suggests that a reduction of incarceration rates can be obtained.

These diversion programs tend to desire community control rather than explicit self-government. The ways community control and self-government are to interrelate clearly requires careful attention. It is not possible to imagine self-government without community control of diversion or other justice programs. However, rudimentary community controls plagued by government interference, insecure funding and lack of cooperation from within the mainstream system do not lay much of a basis for self-government.

Great potential exists for Aboriginal-controlled diversion programs. The present lack of priority for these programs stands in stark comparison to the resources and employment available to maintain and, if necessary, shore up the correctional system which "specializes" in Aboriginal offenders. Political moves towards Aboriginal self-government expressed as Aboriginal control of the more formal aspects of criminal justice, such as policing and sentencing, will not automatically alleviate this situation. Aboriginal political groups will have to embrace the substantive issues of justice programming, and raise these to a more central place in their own priorities. However, without complementary constitutional moves towards more Aboriginal self-government the prospects are not good for shifting the focus of policy and intervention to actually reducing the high levels of incarceration of Aboriginal people in Canada.

These conclusions are, of course, open to reconsideration if and when more representative and thorough documentation on the development of Aboriginal-controlled justice programs across Canada can be obtained and/or is undertaken.[1]

4.3 Parallel Justice

There has been much more attention in mainstream Canada to the quest for a parallel Aboriginal justice system since the Canadian Bar Association released its 1988 report recommending such a system.[2] The intent of our annotations on Aboriginal-controlled justice programs was not to deal substantively with this question. However, it is clear that the creation of such a parallel system is being implied by the emergence of these Aboriginal-controlled programs. It is therefore fitting that we should briefly refer to the prospects and streategy for such a parallel system by way of our conclusion.

Jackson's report for the Canadian Bar Association is based on the recognition, which we share, that the problem of over-incarceration has progressed to the point that something fundamental must change. Tinkering with the system can not be justified as based on good intentions, let alone good policy objectives. He argues that some change towards a parallel system can occur now, without waiting for constitutional and political reform, using the existing power under Section 107 of the ***Indian Act*** to create Indian Justices of the Peace. His argument is that the sort of legal pluralism required to create a parallel justice system is not only consistent with common law but with the ***Charter***. The Royal Commission on the Donald Marshall, Jr. Prosecution follows on the logic of the Canadian Bar Association and includes a recommendation to create a Native Criminal Court using this provision of the ***Indian Act*** (see recommendation 20).

The fact that a parallel Aboriginal-controlled system may emerge in part from within the dominant political and criminal justice system should come as no surprise to students of socio-legal change. Yet without such reforms as Indian Justices of the Peace being associated with a more overriding change in structure, policy and condition it is very unlikely that either self-government or decarceration will be accomplished.

Jackson himself notes that:

> **In Saskatchewan, where native justices of the peace were introduced in the 1970's and operated for several years, the system was bedevilled by the lack of adequate training for justices, little or no support staff, inadequate facilities for holding hearings and a lack of consensus among native communities on the appropriateness of an Indian justice of the peace holding court on the reserve in which he or she was residing.[3]**

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[1] Additional references, not able to be annotated within the budget of this project, have recently been located. These are listed under appendix 4 for the benefit of the reader.

[2] Jackson, Michael. ***Locking Up Natives in Canada,*** a Report to the Committee of the Canadian Bar Association on Imprisonment and Release. Vancouver: University of British Columbia, June 1988.

[3] Ibid., pp.41-42.

A discussion paper on the Saskatchewan Justices of the Peace program also refers to "...the substantial limitations of this anachronistic provision..."[1] and suggests a more encompassing model for a parallel justice system.

Though the Royal Commission on the Donald Marshall, Jr. Prosecution recommended a parallel justice system based on Indian Justices of the Peace, its own report on the Mi'Kmaq raised questions about the effectiveness of this in isoloation from broader change. The author poses the question:

> **...how effective can a Native J.P. be if he has no structural resource, such as community-based diversion projects, to which he can turn? Again, the development of a single program in isolation, without closely coordinated supporting structures, is likely to have little real impact....**[2]

A broader critique of the limitations of Indian Justices of the Peace, which accounts for the massive urbanization of Aboriginal people in Canada, is included in a soon to be published discussion of Aboriginal policing. [3]

These criticisms suggest that there is no political or legal panacea for creating a parallel Aboriginal justice system which can link the evolution of Aboriginal self-government to the decarceration of Aboriginal people across Canada. Not surprisingly, Aboriginal groups presenting to the Manitoba Aboriginal Justice Inquiry have stressed legal pluralism, self-government and the need for tripartite negotiations.[4] Based on preliminary reports, the Manitoba Inquiry may be ready to tackle the fundamental questions of self-government, including how to overcome the systemic discrimination (racism) operating in the criminal justice system, which pertain to the desperate need to divert and ultimately prevent the massive over-incarceration of Aboriginal people in Canada.

In the end, all political and policy reforms will have to be judged by their specific ability to facilitate this outcome.

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1 Dogan D. Akman. ***Justices of the Peace Under Section 107 of the Indian Act***, undated, p.61.

2 Clark, Scott. ***The Mi'Kmaq and Criminal Justice in Nova Scotia.*** Prepared for the Royal Commission on the Donald Marshall, Jr. Prosecution, February 1989, p.67.

3 Harding, Jim. "Policing and Aboriginal Justice." In ***Canadian Journal of Criminology,*** forthcoming July-Oct. 1991.

4 ***A Summary of Recommendations from Aboriginal Representatives to the Manitoba Aboriginal Justice Inquiry,*** February 1, 1991.

Appendix 1

University of Regina

Prairie Justice Research Regina, Saskatchewan Canada S4S 0A2 (306) 585-4064

July 16, 1990

Dear Colleague:

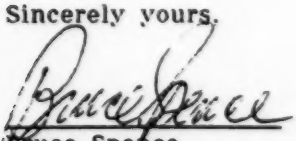
Prairie Justice Research (PJR) is compiling an annotated bibliography on alternative justice and corrections programs run by aboriginal people as part of their movement toward self-determination. The work is tentatively entitled: "Breaking Down The Walls: An Annotated Bibliography Of Justice Programs Under Aboriginal Control." We are writing to request your assistance in gathering materials on this subject.

PJR is a university-based, socio-legal research unit supported in part by the federal Ministry of the Solicitor General's sustaining contribution program for criminological research centres. Since our inception in 1977 we have completed several major studies on native people and the criminal justice system. The bibliographic project stemmed from a recent PJR-sponsored research consultation where participants from across western Canada were challenged to identify future research directions on reducing aboriginal incarceration levels.

We are looking for alternatives such as band or tribal council police forces, spiritual programs for correctional centre inmates, bush camps, programs aimed at young offenders, community-based mediation programs, community-based sentencing and probation options, and indigenous judicial or legal systems that parallel the Canadian criminal justice system. The literature could be in the form of proposals, annual reports, research papers, doctoral theses, political position papers or books. We prefer materials on programs that are presently in operation or in the developmental phase, but we are not excluding expired programs.

If your organization is aware of any aboriginal justice initiatives we would appreciate hearing about them. We ask that you take some time to provide us with a bibliographic reference or send us actual documents if you have them. A response by mid August would be most appreciated. As well, if PJR can be of any help to you or if you would like to know more about our work please do not hesitate to contact us.

Sincerely yours,



Bruce Spence
Research Officer
(306)585-4862

Appendix 2

AGENCIES/ORGANIZATIONS RESPONDING BY MAIL

- Ray Jones, General Manager, Northern Native Broadcasting, Terrace, BC.
- Ed Buller, Senior Policy Analyst, Corrections Branch, Solicitor General Canada, Ottawa, ON.
- J. Rich Ponting, Department of Sociology, University of Calgary, Calgary, AB.
- Wanda Chandler, Library Assistant, Public Inquiry into the Administration of Justice and Aboriginal People, Winnipeg, MB.
- Don McCaskill, Professor, Department of Native Studies, Trent University, Peterborough, ON.
- Kathy Wilde, Solicitor General Canada, Ottawa, ON.
- Ray Fox, Director of Radio, The Native Perspective (The Aboriginal Multi-Media Society of Alberta), Lac La Biche, AB.
- Audrey Parke, Executive Director, Alberta Indian Health Care Commission, Edmonton, AB.
- Maurice Tassé, Director General, Amerindian Police, Pointe-Bleue, PQ.
- Mary Tastad, Native Law Centre, University of Saskatchewan, Saskatoon, SK.
- Rene E. Toupin, Tribal Administrator, Interlake Reserves Tribal Council, Gypsumville, MB.
- Stan Divorski, Senior Policy Analyst, Solicitor General Canada, Ottawa, ON.
- Ms. G. Poorman, Executive Office, Federation of Saskatchewan Indian Nations, Regina, SK.
- Janet Longclaws, Administrative Assistant to Philip Fontaine, Assembly of Manitoba Chiefs, Winnipeg, MB.
- Dianne T. MacDonald, Associate Regional Director, Prairie Regional Office, Solicitor General, Saskatoon, SK.
- Allan Cawsey, Chairman, Task Force on the Criminal Justice System and its Impact on the Indian and Metis of Alberta, Edmonton, AB.
- Ryan Rempel, Student-at-Law, Court of Appeal for Saskatchewan, Regina, SK.
- Bradford W. Morse, Professor of Law, Univeristy of Ottawa, Ottawa, ON.
- Belinda Di Marco, Native Counselling Services of Alberta, Edmonton, AB.
- Sally Weaver, Department of Anthropology, University of Waterloo, Waterloo, ON.
- Lillian Mountour, Administrative Analyst, Ontario Federation of Indian Friendship Centres, Toronto, ON.

AGENCIES/INDIVIDUALS RESPONDING BY PHONE OR MESSAGE

- Roberta Miskokem
- Scott Clark, Ministry of Justice, Canada, ON.
- Virginia Lavallee, Chiefs of Ontario, ON.
- Joe Pinteries
- Duncan Chapell, Simon Fraser University, BC.
- Jim Rogers, Inuvialuit, Regional Corporation.

Appendix 3

JUSTICE PROGRAMS DELIVERED BY ABORIGINAL GROUPS
Listed in National Inventory

CANADA

Courts

- The Native Courtworker Program (all provinces and territories except SK, NS, NB and PEI.

Corrections

- Development of a Native Pre-Treatment Correctional Program.

ALBERTA

Policing

- Blood (Reserve) Tribal Police Council
- Tribal Police Programs: Hobbema, Enoch, Stoney and Saddle Lake
- Hobbema Four Nations Police Department

Courts

- Court Interpreters
- Youth and Family Courtworker Program
- Quality Contact with the Law

Corrections

- Grierson Community Correctional Centre
- Westcastle Camp
- Native Brotherhood/Sisterhood Program
- Native Elders Visitation Program
- Community Residential Centre Addictions Treatment Program
- Community Services (Parole) Supervision Program
- Blood Tribe (Kainai) Corrections Project
- Native Elders Visitation Program for Young Offenders
- Native Youth Program for Young Offenders
- Kochee Mena Native Group Home
- Sam Laboucane Memorial Native Group Home
- Peigan Corrections Project

Diversion

- Teenagers Against Crime Program
- Native Probation Supervision Program
- Dene tha Native Youth Services Centre (Attendance Centre)
- Wabasca/Desmarais Native Youth Services Centre (Attendance Centre)
- Native Young Offenders Probation Supervision
- Adolescent Treatment Program - St. Paul (pilot project)
- Crime Prevention Coordinators (Blood Tribe and Yellowhead Tribal Council)

BRITISH COLUMBIA

Policing

- Victim Assistance Program

Corrections

- AIMS House (halfway house for native offenders)
- Project Rediscoveries (residential program for native young offenders)

Diversion

- Community Service Work Supervision
- Heritage Trail Project
- Caribou Friendship Centre Lifeskills Program
- Kakawis Family Development Centre (alcohol/drug abuse treatment centre)
- Round Lake Alcohol and Drug Treatment Centre
- Kamloops Crime Prevention Committee

MANITOBA

General

- Island Lake Advisory Committee on RCMP and Justice Protocols

Policing

- Dakota Ojibway Tribal Council (DOTC) Policing Program
- Dakota Ojibway Tribal Council Police Commission

Courts

- Dakota Ojibway Probation Services
- St. Thérèsa Point Indian Government Youth Court System

Diversion

- Shamattawa Community Development Worker
- Community Holistic Circle Healing
- Ma Mowi Wi Chi Itata Project
- Solvent Abuse Committee
- Shamattawa Project
- Mallard Youth Justice Committee
- Community Justice Committee

NEWFOUNDLAND

Diversion

- Happy Valley Youth Diversion Program

NORTHWEST TERRITORIES

General

- Family Law Review Committee

Courts

- Aboriginal Rights Court Challengers
- Native Courtworkers Program, MacKenzie Region

Corrections

- Yellowhead Tribal Council Corrections Project

Diversion

- Northwest Territories Crime Prevention Project

ONTARIO

General

- Ontario Native Council on Justice (ONCJ)

Policing

- First Nations Policing Arrangements (Program)
- Ontario First Nations Police Commission

Courts

- Ontario Native Criminal Courtworker Program

Corrections

- Native Inmate Liaison Worker Program

Diversion

- Counselling, Supervision, Substance Abuse Education Program
- Community Residential Services Program
- Native Inmate Liquor Offender Project

QUEBEC

Policing

- Kahnawake Peacekeepers/River Desert Band/Maniwaki Band
- Amerindian Police Council
- Quebec Aboriginal Police
- Amerindian Police Program

Courts

- Northern Quebec Circuit Court

SASKATCHEWAN

General

- Reflecting Indian Concerns and Values in the Criminal Justice System (FSIN)

Corrections

- Female Community Residence

Diversion

- Community Training Residences for Offenders

YUKON

Corrections

- Prison Liaison Officer Program

Diversion

- Crime Prevention Officer Program
- Yukon Courtworkers Program

Appendix 4

OTHER SOURCES ON ABORIGINAL-CONTROLLED JUSTICE PROGRAMS

1. General

Gardner, Philip. ***Justice Development and the Indian People of Treaty 3***,n.d.

Rasing, Wm. ***On Conflict Management with Nomadic Inuit: An Ethnological Essay.*** M.A. thesis for Catholic University, Nyneger, Netherland, 1984.

Canada, Quebec Department of Justice, Coordinator of Department Activities Among Native People. ***Justice in Question: Evaluation of Projects to Create a Local Judiciary in Povungnituk (N. Quebec)*** by Serge Bouchard and Clothilde Pelletier. Montreal: Quebec Department of Justice, 1986.

Coyle, Michael. "Traditional Indian Justice In Ontario: A Role for the Present?" In ***Osgoode Hall Law Journal*** 24 (1986): 605-633.

Tribal Justice Centre, Saddle Lake Band. "Indian Jurisprudence and Mediation the Indian Way." Paper presented at the Federal/Provincial Conference on Mediation, Winnipeg, 1988.

Wildsmith, Bruce, ***Submission of the Union of Nova Scotia Indians to Royal Commission on the Donald Marshall, Jr. Prosecution.*** Union of Nova Scotia Indians, October 28, 1988.

2. Courts

Akman, Dogan D. ***First Working Draft: Canada FSIN Saskatchewan Project - Justice of the Peace Under Section 107 of the Indian Act.*** First working draft for discussion purpose for a Canada, Federation of Saskatchewan Indian Nations, Saskatchewan Justice Project, n.p., n.d.

Summary of Peacemakers Courts Information Package. Window Rock, USA: The Navajo Nations, n.d.

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